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March 7, 2023

**VIA ECF**

Honorable Elizabeth A. Wolford  
United States District Judge  
100 State Street  
Rochester, New York 14614

Re: Mary Van Brunt-Piebler v. Absolute Software, Inc., Absolute Software Corporation, Geoff Haydon, Thomas Kenny and Todd Awtry  
16 Civ. 6313 (EAW) (MWP)

Dear Judge Wolford,

Enclosed hereto are Defendants' counter-designations from the deposition of Daniel Berardo.

Respectfully submitted,

/s/ Laura Lestrade  
Laura Lestrade

cc: J. Nelson Thomas, Esq. (via ecf)  
nthomas@theemploymentattorneys.com  
Jonathan W. Ferris, Esq. (via ecf)  
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Attorneys for Plaintiff

# EXHIBIT A

# Designations

Designation	Count
● Defendant's Additional Designations	12

Page 1

1

2 UNITED STATES DISTRICT COURT

3 WESTERN DISTRICT OF NEW YORK

4

5 MARY VAN BRUNT-PIEHLER, )

6 Plaintiff, )

7 v. ) No. 16-cv-6313

8 ABSOLUTE SOFTWARE, INC., ) (EAW) (MWP)

9 ABSOLUTE SOFTWARE )

10 CORPORATION, GEOFF HAYDON, )

11 THOMAS KENNY, and TODD AWTRY)

12 Defendants. )

13 \_\_\_\_\_ )

14

15

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17 DEPOSITION OF DANIEL BERARDO

18 Vancouver, BC

19 Wednesday, May 8, 2019

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21

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23

24 Reported by:

JESSICA D. ARCHIBALD

25 JOB NO. 160294

Page 2

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3

4 Wednesday, May 8, 2019

5 10:58 a.m.

6

7

8 Deposition of DANIEL BERARDO, held at

9 the offices of DORSEY & WHITNEY LLP, 1095 West

10 Pender Street, Suite 1070, Vancouver, BC,

11 before Jessica D. Archibald, Official Reporter,

12 authorized to administer oaths in the province

13 of British Columbia.

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Page 3

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2 A P P E A R A N C E S:

3

4

5 THOMAS & SOLOMON

6 Attorneys for Plaintiff

7 693 EAST AVENUE

8 ROCHESTER, NY 14607

9 BY: NELSON THOMAS, ESQ.,

10 via teleconference;

11

12

13 DORSEY & WHITNEY

14 Attorneys for Defendants

15 51 WEST 52ND STREET

16 NEW YORK, NY 10019

17 BY: MARK SULLIVAN, ESQ.,

18 LAURA LESTRADE, ESQ.

19

20

21

22 ALSO PRESENT:

23 Maninder Malli, Esq., Absolute Software

24 Mike Elderkin - videographer

25

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1

2 IT IS HEREBY STIPULATED AND AGREED

3 by and between the attorneys for the

4 respective parties herein, that filing and

5 sealing be and the same are hereby waived.

6 IT IS FURTHER STIPULATED AND AGREED

7 that all objections, except as to the form

8 of the question, shall be reserved to the

9 time of the trial.

10 IT IS FURTHER STIPULATED AND AGREED

11 that the within deposition may be sworn to

12 and signed before any officer authorized

13 to administer an oath, with the same

14 force and effect as if signed and sworn to

15 before the Court.

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<p style="text-align: right;">Page 5</p> <p>1 D. Berardo</p> <p>2 VIDEOGRAPHER: This is the start of</p> <p>3 media number 1 in the video-recorded</p> <p>4 deposition of Daniel Berardo in the matter</p> <p>5 of Mary Van Brunt-Piehl versus Absolute</p> <p>6 Software Incorporated et al. in the United</p> <p>7 States District Court Western District of</p> <p>8 New York. The case number is 16-cv-6313.</p> <p>9 This deposition is being held at 1985 West</p> <p>10 Pender Street, Vancouver, British Columbia,</p> <p>11 Canada, on May 8th, 2019, at approximately</p> <p>12 10:59 a.m.</p> <p>13 My name is Mike Elderkin. I am the</p> <p>14 legal video specialist from TSG Reporting</p> <p>15 Incorporated headquartered at 747 3rd</p> <p>16 Avenue, New York, New York. The court</p> <p>17 reporter is Jessica Archibald, in</p> <p>18 association with TSG Reporting.</p> <p>19 Will counsel please introduce</p> <p>20 yourselves.</p> <p>21 MR. SULLIVAN: Mark Sullivan and</p> <p>22 Laura Lestrade from Dorsey &amp; Whitney on</p> <p>23 behalf of the defendants. Also present in</p> <p>24 the room is Maninder Malli, in-house</p> <p>25 counsel for Absolute.</p>	<p style="text-align: right;">Page 7</p> <p>1 D. Berardo</p> <p>2 deposition is occurring in Canada, but I --</p> <p>3 we're under -- I assume we're all in</p> <p>4 agreement that we're using FRCP rules and</p> <p>5 American rules of procedure and all that</p> <p>6 stuff?</p> <p>7 MR. SULLIVAN: Yes, we are.</p> <p>8 MR. THOMAS: Okay. All right.</p> <p>9 BY MR. THOMAS:</p> <p>10 Q: Mr. Berardo, I'm Nelson Thomas, and I</p> <p>11 am the attorney representing Mary Piehler in</p> <p>12 this case. Have you ever given a deposition</p> <p>13 before?</p> <p>14 A: I have not.</p> <p>15 Q: Okay. What did you do to prepare for</p> <p>16 today's deposition?</p> <p>17 A: We met with -- with Mark and Laura on</p> <p>18 Monday, and then a couple of months back, just</p> <p>19 when we weren't sure of when the deposition</p> <p>20 date would be, we also met for a few hours.</p> <p>21 Q: Okay. And where was -- and I'm --</p> <p>22 I'm having a little bit of trouble hearing</p> <p>23 you. Can you move the microphone closer to</p> <p>24 your...</p> <p>25 A: Oh, sure.</p>
<p style="text-align: right;">Page 6</p> <p>1 D. Berardo</p> <p>2 MR. THOMAS: Nelson Thomas at Thomas</p> <p>3 &amp; Solomon on behalf of the plaintiff, Mary</p> <p>4 Piehler.</p> <p>5 VIDEOGRAPHER: Will the court --</p> <p>6 MS. VAN BRUNT-PIEHLER: Mary Piehler,</p> <p>7 plaintiff.</p> <p>8 VIDEOGRAPHER: Will the court</p> <p>9 reporter please swear in the witness.</p> <p>10 D A N I E L B E R A R D O,</p> <p>11 called as a witness, having been duly</p> <p>12 sworn by a Notary Public, was examined and</p> <p>13 testified as follows:</p> <p>14 EXAMINATION BY</p> <p>15 MR. THOMAS:</p> <p>16 Q: All right. Now that we're on the</p> <p>17 record, I just...</p> <p>18 For the videographer, I just want to</p> <p>19 confirm that the audio coming in through the</p> <p>20 telephone is going in okay for the playback</p> <p>21 for the video here. Is that -- are we all --</p> <p>22 are we all good with that?</p> <p>23 VIDEOGRAPHER: Yes.</p> <p>24 MR. THOMAS: Okay. Perfect. And</p> <p>25 then also, Mark, I just -- I know the</p>	<p style="text-align: right;">Page 8</p> <p>1 D. Berardo</p> <p>2 Q: Or whichever -- I don't know where</p> <p>3 the...</p> <p>4 MR. MALLI: Maybe just speak up a</p> <p>5 little bit.</p> <p>6 THE WITNESS: Sure, yeah, I can speak</p> <p>7 up a little bit.</p> <p>8 BY MR. THOMAS:</p> <p>9 Q: Okay.</p> <p>10 A: Okay.</p> <p>11 Q: Great. Thank you. When you met with</p> <p>12 Laura a few months ago, where was that?</p> <p>13 A: That was -- that was here at -- at</p> <p>14 their office.</p> <p>15 Q: How long was the meeting on Monday?</p> <p>16 A: It was three hours or just under.</p> <p>17 Q: And the meeting back several months</p> <p>18 ago, what was -- how long was that?</p> <p>19 A: I don't recall specifically.</p> <p>20 Probably in the same neighbourhood, three to</p> <p>21 four hours.</p> <p>22 Q: Did you review documents as part of</p> <p>23 that process?</p> <p>24 A: We did, yes.</p> <p>25 Q: What documents did you review?</p>

<p style="text-align: right;">Page 9</p> <p>1 D. Berardo</p> <p>2 A: There were some emails and -- some</p> <p>3 emails. I think that's all I recall. I --</p> <p>4 there was the --</p> <p>5 Q: How many --</p> <p>6 A: There was the --</p> <p>7 Q: -- in total did you get?</p> <p>8 A: I was going to say there was the --</p> <p>9 also the -- a bit of the Absolute policy, a</p> <p>10 section of the Absolute policy. How many</p> <p>11 emails? Maybe 10 to 20 threads.</p> <p>12 Q: Besides the 10 to 20 emails and the</p> <p>13 Absolute policies, did you review anything</p> <p>14 else?</p> <p>15 A: Not that I recall off the top of my</p> <p>16 head right now.</p> <p>17 Q: Tell me a little bit about your</p> <p>18 employment history before coming to Absolute.</p> <p>19 A: Sure. Specific to HR? Or, I mean,</p> <p>20 how far do you want me to go back?</p> <p>21 Q: Why don't -- let's just -- very</p> <p>22 quickly, where did you graduate high school?</p> <p>23 A: Sure. I graduated high school in</p> <p>24 Burnaby, British Columbia, at a high school</p> <p>25 called 'Alpha Secondary.'</p>	<p style="text-align: right;">Page 11</p> <p>1 D. Berardo</p> <p>2 representative, but, essentially, I was</p> <p>3 working at Epcot in the restaurant.</p> <p>4 Q: Okay. Got it.</p> <p>5 A: Yeah.</p> <p>6 Q: Which -- what -- what country?</p> <p>7 A: Canada.</p> <p>8 Q: Okay.</p> <p>9 A: Yeah.</p> <p>10 Q: Okay. Very good. After -- after you</p> <p>11 were at Disney World, where did you go next?</p> <p>12 A: So I went to -- briefly, at a company</p> <p>13 called 'Willis.' I was there just for a few</p> <p>14 months until I went back to Marsh.</p> <p>15 Q: What did you do at Willis?</p> <p>16 A: Same -- same -- it was an office-type</p> <p>17 job; filing, mailroom, reception.</p> <p>18 Q: And then how long were you at Willis</p> <p>19 for?</p> <p>20 A: It was just a few months. Just a few</p> <p>21 months before I went back to Marsh.</p> <p>22 Q: And how long were you at Marsh?</p> <p>23 A: I was at Marsh until 2006, so it was</p> <p>24 -- it was probably early 2005 -- early 2005 to</p> <p>25 September 2006.</p>
<p style="text-align: right;">Page 10</p> <p>1 D. Berardo</p> <p>2 Q: What year was that?</p> <p>3 A: 1997.</p> <p>4 Q: Okay. And then did you attend</p> <p>5 college after that?</p> <p>6 A: Yeah, I attended university at -- I</p> <p>7 graduated from Simon Fraser University, also</p> <p>8 in Burnaby, British Columbia.</p> <p>9 Q: And what year was that?</p> <p>10 A: I graduated in 2002.</p> <p>11 Q: And what was your first full-time</p> <p>12 employment after graduation?</p> <p>13 A: First full-time employment was an</p> <p>14 office coordinator-type job at a company</p> <p>15 called 'Marsh' in Vancouver.</p> <p>16 Q: And how long were you -- when did you</p> <p>17 start that job, and when did you end it?</p> <p>18 A: So I started that job in 2002, and</p> <p>19 then I ended in two thousand and -- 2003.</p> <p>20 Q: And what was your next position?</p> <p>21 A: Then I went to Disney World, and I</p> <p>22 worked at Disney World for a year. Yeah.</p> <p>23 Q: What did -- what did you do at Disney</p> <p>24 World?</p> <p>25 A: I was a Canadian cultural</p>	<p style="text-align: right;">Page 12</p> <p>1 D. Berardo</p> <p>2 Q: And what was your position there?</p> <p>3 A: Same type of position; office</p> <p>4 coordinator.</p> <p>5 Q: All right. And then what was your</p> <p>6 next position?</p> <p>7 A: So -- but I should say during this</p> <p>8 time, I was in -- I was also in school. I was</p> <p>9 in -- part-time taking a management</p> <p>10 certificate in human resources, so -- in 2005</p> <p>11 through 2007. In 2006, I -- I moved to a</p> <p>12 company called 'Radical Entertainment' in</p> <p>13 Vancouver.</p> <p>14 Q: What do they do?</p> <p>15 A: Video games.</p> <p>16 Q: Okay. And what was your role there?</p> <p>17 A: I was an HR -- HR coordinator. I</p> <p>18 started off as an HR coordinator.</p> <p>19 Q: And how long were you at Radical</p> <p>20 Entertainment?</p> <p>21 A: So I was there until the very end of</p> <p>22 2010.</p> <p>23 Q: And what was your next job after</p> <p>24 that?</p> <p>25 A: So my -- my next job was at a company</p>

1 D. Berardo  
2 -- it was, again, only for a couple of months  
3 before I joined Absolute. It was a mining  
4 company. The -- the name escapes me for some  
5 reason. It was a mining company in Vancouver.  
6 I was there for two and a half years. It was  
7 called 'Wardrop Engineering.' Did I -- sorry,  
8 I -- I'm not sure I said -- I was there for  
9 two and a half months.  
10 Q: Oh, okay. That's what I was going to  
11 ask. Okay.  
12 A: I may have said years. It was  
13 months.  
14 Q: Okay. It felt like two and a half  
15 years; right?  
16 A: Yeah, it did.  
17 Q: All right. Following that, you went  
18 to Absolute, and when was that?  
19 A: That was June of 2011.  
20 Q: And what was your role at Absolute?  
21 A: So I started off in June 2011 as a  
22 senior HR generalist.  
23 Q: And what was your next position?  
24 A: So my next position -- so once the  
25 head of -- the head of HR left -- I want to

1 D. Berardo  
2 say -- it was towards the end of 2012. So  
3 when she left, I assumed the position of head  
4 of HR. My technical -- or, sorry, my -- my  
5 position was HR manager, and then subsequently  
6 promoted to HR director at some point.  
7 Q: And approximately when was that?  
8 A: Promoted to HR director, probably  
9 twenty -- 2014. Maybe mid-2014.  
10 Q: And what was your next position?  
11 A: So I just -- so I was an HR director  
12 until I left Absolute Software.  
13 Q: Let me just make sure that I have  
14 this correct.  
15 A: Sure.  
16 Q: That you were a senior HR generalist  
17 when you started in June of 2011; you became  
18 an HR manager when the head of HR left in  
19 2012; then you became head of HR; and then HR  
20 director; and then you left in 2014?  
21 A: Yeah, at the -- sorry, no, I left at  
22 the very end of 2015. So December --  
23 Q: 2015?  
24 A: Yeah, the very end of 2015.  
25 Q: Now, there was a complete turnover in

1 D. Berardo  
2 HR between 2015 and 2016 --  
3 MR. SULLIVAN: Objection.  
4 BY MR. THOMAS:  
5 Q: -- at Absolute; right?  
6 MR. SULLIVAN: Objection to form.  
7 THE WITNESS: No, there was a -- I  
8 would say there -- there was a turnover  
9 once I had left in 2016. Not -- not  
10 during --  
11 BY MR. THOMAS:  
12 Q: What -- what prompted --  
13 A: -- 2015.  
14 Q: -- that? What prompted that?  
15 A: My departure.  
16 Q: And what -- what about your departure  
17 prompted the turnover?  
18 A: I -- I don't -- I don't know. I --  
19 I'm not sure, just because I wasn't at  
20 Absolute at that time.  
21 Q: Were you -- were you in touch with  
22 people who were at Absolute --  
23 MR. SULLIVAN: Objection to form.  
24 BY MR. THOMAS:  
25 Q: -- in the HR department?

1 D. Berardo  
2 A: I was, yeah. I had a few -- couple  
3 people that I kept in touch with in the HR  
4 department.  
5 Q: What did they say to you about why --  
6 what was happening?  
7 MR. SULLIVAN: Objection to form.  
8 THE WITNESS: I think they -- the new  
9 head of HR, they -- you know, they just  
10 weren't really getting along with her.  
11 BY MR. THOMAS:  
12 Q: Was that Amanda Mallow?  
13 A: It was, yes.  
14 Q: Why did you decide to leave Absolute?  
15 A: I was head-hunted by a company in  
16 Vancouver, and it was just a good next step in  
17 my career.  
18 Q: Now, when you were at Absolute, you  
19 reported to the head of HR until -- and who  
20 was the head of HR?  
21 A: Oh, no, sorry, I -- oh, sorry, until  
22 she left. Sorry. Her name was Leah Rubin.  
23 Q: Okay.  
24 A: Yes.  
25 Q: And when you became HR manager, who

Page 17

1 D. Berardo  
2 did you report to?  
3 A: I reported in to Errol Olsen.  
4 Q: Okay. Did you report in to Errol  
5 Olsen the entire time until you left?  
6 MR. SULLIVAN: Objection to form.  
7 THE WITNESS: From -- from what I  
8 recall, yes.  
9 BY MR. THOMAS:  
10 Q: And when did you officially get the  
11 title 'head of HR'?  
12 A: So I -- I guess I -- essentially, I  
13 never had, officially, the title of 'head of  
14 HR.' I was the head of HR, but -- but, again,  
15 I was -- I was -- the first title was 'HR  
16 manager,' and then I was subsequently promoted  
17 to HR director.  
18 Q: Oh, okay.  
19 A: Yeah.  
20 Q: So when you were -- so is it your  
21 testimony that when you were HR manager, that  
22 was the equivalent of head of HR?  
23 MR. SULLIVAN: Objection to form.  
24 THE WITNESS: I was leading the  
25 department.

Page 18

1 D. Berardo  
2 BY MR. THOMAS:  
3 Q: Okay. Did they conduct a search for  
4 a replacement for Leah Rubin when she  
5 departed?  
6 A: Not that I recall.  
7 Q: You just advanced into the position  
8 upon her departure?  
9 A: Correct. I mean, I was, yeah, asked  
10 to -- to assume the role.  
11 Q: How -- how did you feel about ABT --  
12 how did you feel about Absolute sales culture  
13 under Thomas Kenny and Todd Awtry during the  
14 time that you were there?  
15 MR. SULLIVAN: Objection to form.  
16 THE WITNESS: Sorry, can you -- can  
17 you clarify? What -- what do you mean by  
18 how I felt about it? Like...  
19 BY MR. THOMAS:  
20 Q: What was your -- as an HR  
21 professional, what was your --  
22 A: Sure.  
23 Q: -- observation about how they were  
24 conducting themselves at the company?  
25 A: Sure.

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1 D. Berardo  
2 MR. SULLIVAN: Objection to form.  
3 THE WITNESS: Okay.  
4 MR. THOMAS: And, Mark, what is your  
5 -- and just one second. I'm -- sorry to  
6 cut you off, Dan -- or Mr. Berardo.  
7 Mark, what is your objection?  
8 MR. SULLIVAN: It's calling for an  
9 opinion. It's also ambiguous.  
10 BY MR. THOMAS:  
11 Q: Well, let me make it clear,  
12 Mr. Berardo. I'm asking for your observations  
13 about what you saw in terms of Thomas Kenny  
14 and Todd Awtry's conduct from an HR  
15 perspective while they were at -- while you  
16 were at Absolute with them.  
17 MR. SULLIVAN: Objection so form.  
18 THE WITNESS: Sorry, and specifically  
19 when they first came in? Is that the time  
20 frame you're asking me about.  
21 BY MR. THOMAS:  
22 Q: Why don't we start there and go all  
23 the way through.  
24 A: Sure. Okay. So -- so I -- so,  
25 previously, I -- I don't think that we --

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1 D. Berardo  
2 Absolute had -- or, to my knowledge, had a  
3 sales organization that was led by people that  
4 had come from a larger company, a larger  
5 corporation. So I saw them coming in and  
6 putting in some -- some more -- or some more  
7 professional ways of -- professional ways of  
8 conducting -- you know, running the sales  
9 organization. Kind of that was my -- that was  
10 my observation, is that they were -- is that  
11 they were trying to advance the sales  
12 organization to be a bit more of a  
13 professionally run company. Or organization.  
14 Q: What -- did your view of their -- the  
15 cultures that they brought change over time?  
16 MR. SULLIVAN: Objection to form.  
17 THE WITNESS: Did it -- are you  
18 asking did it change the culture of the  
19 sales organization?  
20 BY MR. THOMAS:  
21 Q: No, did your view change?  
22 A: Did my view --  
23 Q: So they basically came in, and you  
24 thought they brought a more professional --  
25 tried to bring a more professional approach.



Page 21

1 D. Berardo  
2 A: It did -- it did not --  
3 Q: Was that the opinion you held the  
4 entire time --  
5 A: It --  
6 Q: -- while you were there?  
7 A: Yes, it was. Yeah.  
8 Q: What -- what other observations did  
9 you have about how they ran the sales culture  
10 at Absolute while you were there?  
11 MR. SULLIVAN: Objection to form.  
12 THE WITNESS: I don't -- is there --  
13 is there something specific -- I -- that  
14 you're looking for or? Just --  
15 BY MR. THOMAS:  
16 Q: Just -- just -- just your  
17 observations, if -- if you saw them conduct  
18 themselves in any way other than professionals  
19 during the time that you were there.  
20 MR. SULLIVAN: Objection to form.  
21 THE WITNESS: You know, not that I --  
22 not that I recall on the whole.  
23 BY MR. THOMAS:  
24 Q: What about not on the whole, more  
25 specifically?

Page 22

1 D. Berardo  
2 MR. SULLIVAN: Objection to form.  
3 THE WITNESS: I mean -- I mean, off  
4 the top of my head, I -- I can't think of a  
5 specific incident at -- at this time.  
6 BY MR. THOMAS:  
7 Q: Did you think that Mr. Awtry  
8 conducted himself in a professional manner  
9 when he was working at Absolute from a -- let  
10 me strike that.  
11 What was your observation about how  
12 Mr. Awtry conducted himself from an HR point  
13 of view during the time that he was employed  
14 at Absolute and you were there?  
15 MR. SULLIVAN: Objection to form.  
16 THE WITNESS: It -- sorry, it's hard  
17 for me to answer a question -- just an  
18 observation question with -- without  
19 knowing kind of specifically what you're --  
20 what you're asking. You know, I -- I  
21 worked with him over the course of two and  
22 a half years or so, maybe three years. I  
23 mean, again, I -- for the most part, from  
24 what I recall, he -- he always conducted  
25 himself professionally.

Page 23

1 D. Berardo  
2 BY MR. THOMAS:  
3 Q: Do you recall times when you felt he  
4 was not conducting himself professionally?  
5 MR. SULLIVAN: Objection to form.  
6 THE WITNESS: I mean, there's --  
7 there's a -- there's a -- I don't remember  
8 anything specifically, but -- I mean, I  
9 would just be speculating without referring  
10 back to emails. It's just -- it was just a  
11 really long time ago.  
12 BY MR. THOMAS:  
13 Q: Well, from the emails you took a look  
14 at on Monday --  
15 A: Sure.  
16 Q: -- do you remember anything in there  
17 that made you think that he conducted himself  
18 in ways other than professionally, based on  
19 your observations?  
20 A: From the emails on Monday? Not that  
21 I recall, no.  
22 Q: Okay. What about Mary Piehler? What  
23 was your view of how she conducted herself  
24 from an HR point of view -- strike that.  
25 What were your observations about

Page 24

1 D. Berardo  
2 how Mary Piehler conducted herself, from an HR  
3 point of view, when both you and her were  
4 working at the company?  
5 MR. SULLIVAN: Objection to form.  
6 THE WITNESS: So, you know, Mary  
7 was -- you know, she -- she was very -- my  
8 observations were she was very passionate  
9 about her -- her business. And from --  
10 from what I recall -- again, this is just a  
11 broad generalization from what I  
12 remember -- is that she was very -- she  
13 objected to a lot of items that were coming  
14 down, and that, you know, perhaps she  
15 was -- she was difficult to work with.  
16 BY MR. THOMAS:  
17 Q: Did you find her difficult to work  
18 with?  
19 A: Not all the time. At points, from  
20 what I recall, yes.  
21 Q: Tell me a time when you found her  
22 difficult to work with.  
23 A: Again, it's -- it's hard to remember  
24 specifics. I -- I remember just phone calls  
25 where, a lot of times, our conversations would

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1 D. Berardo  
2 be going in a round -- going around in a lot  
3 of circles. Never really taking ownership of  
4 situations. So it was -- it was, you know,  
5 generally, never her fault.  
6 Again, I preface that with saying this is  
7 just a general observation, so -- so for me to  
8 give a specific time when that happened would  
9 be difficult for me to recall right now.  
10 Q: Yeah, in speculating about it, do you  
11 remember anything?  
12 A: Any specific incidences?  
13 Q: Yes.  
14 A: Nothing off the top of my head right  
15 now.  
16 Q: Tell me a little bit about your  
17 employment since you have left Absolute.  
18 A: Sure. So I -- I went to a company  
19 called 'Hyperwallet' in Vancouver. Assumed  
20 the position of VP of people. And so I -- I  
21 have been there ever since.  
22 Q: What is your role there?  
23 A: So my role is the head of HR. I will  
24 preface that with saying that our company was  
25 acquired by PayPal, and so my role has changed

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1 D. Berardo  
2 since the acquisition, since January 1st, so  
3 I'm, you know, not the VP of people. So  
4 I'm -- I'm head of people for specific -- the  
5 Hyperwallet division within PayPal.  
6 Q: Were you aware of surveys that were  
7 done of employees in 2014 to get employee  
8 feedback?  
9 A: Yes. Yeah.  
10 Q: Did any of those -- did you get the  
11 chance to see the results of those surveys?  
12 A: In 2014, yes, I did. Yeah.  
13 Q: Did those results raise any concerns  
14 with you?  
15 A: Yeah, absolutely, they did. Yeah.  
16 Q: Why?  
17 A: There was a -- there was a number of  
18 areas the company had to work on, in terms of  
19 culture -- I mean, there was -- there was  
20 other areas. I mean, we -- we came up with  
21 a -- with a list of areas that the company  
22 needed to work on, and we came up with a plan  
23 to work on them. Like, another example that  
24 comes to mind is around compensation, coming  
25 up with a professional compensation plan for

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1 D. Berardo  
2 the company. You know, there -- there was  
3 definitely other areas too that we worked on.  
4 Q: Do you remember the report showing  
5 serious concerns about Todd and -- Todd Awtry  
6 and Thomas Kenny's professionalism?  
7 MR. SULLIVAN: Objection to form.  
8 THE WITNESS: So I -- I viewed -- I  
9 did view some of those documents during the  
10 review on Monday just very briefly, but I  
11 do recall there being some comments in the  
12 survey about Thomas and Todd.  
13 BY MR. THOMAS:  
14 Q: Did -- did those affect -- when you  
15 saw them at the time in 2014, did you pay any  
16 attention to them in terms of your view of  
17 Thomas and Todd?  
18 MR. SULLIVAN: Objection to form.  
19 THE WITNESS: So, sorry, can you  
20 clarify. What do you mean by in terms of  
21 my view?  
22 BY MR. THOMAS:  
23 Q: I had asked you what your view was of  
24 Thomas --  
25 A: Oh, right.

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1 D. Berardo  
2 Q: -- Kenny and Todd Awtry when they  
3 worked at Absolute and you worked there. Do  
4 you remember that a few minutes ago?  
5 A: I do, yes.  
6 Q: And I'm asking you, when you were  
7 there and you saw these reports about the  
8 professionalism of Thomas and Todd as reported  
9 by people within the company, to what degree,  
10 if any, did it affect your view of their  
11 professionalism?  
12 MR. SULLIVAN: Objection to form.  
13 THE WITNESS: So from what I recall,  
14 my view didn't change. Absolute had come  
15 from an environment where our founder CEO  
16 was very heavily sales-focussed. So it was  
17 -- it was a bit of a family-type culture.  
18 And so I think I knew when we were bringing  
19 in Thomas and TK that -- sorry, 'TK,'  
20 Thomas and Todd -- that -- that there would  
21 be a shift and some resistance to the --  
22 the type of culture or the type of sales  
23 environment that they -- they would be  
24 bringing to -- into the company.  
25 BY MR. THOMAS:

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1 D. Berardo  
2 Q: You said the founder of the company  
3 was very sales-focussed. Did I hear you  
4 correctly?  
5 A: I mean, from what -- yeah, I mean, I  
6 worked with him for -- until he left the  
7 company for a year and a half. And so, from  
8 what I recall, he was very sales-focussed.  
9 Q: And were Thomas Kenny and Todd Awtry  
10 less sales-focussed than him?  
11 A: No. No. I mean, just -- it was just  
12 a different -- a different approach.  
13 Q: And what -- how was that approach  
14 different?  
15 A: So I think John's -- who was the  
16 founder CEO -- he was a bit -- again, a bit  
17 more family -- to use the word -- the term  
18 'family,' but, you know, we're all in this --  
19 you know, not all in this together, but we're  
20 all part of the same family, for example. A  
21 bit difficult to describe. Whereas they came  
22 in as a bit more corporate and -- and  
23 professional and buttoned-up.  
24 Q: So you're saying Thomas Kenny and  
25 Todd Awtry came in as more professional and

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1 D. Berardo  
2 buttoned-up?  
3 A: Correct, yes.  
4 Q: Okay. When you saw the comments  
5 about Thomas and Todd's conduct at the company  
6 in the 2014 survey, what steps did you take to  
7 remedy the problems that were -- if any, that  
8 were raised in the survey?  
9 MR. SULLIVAN: Objection to form.  
10 THE WITNESS: I don't -- I don't  
11 recall specifically, but, you know, I --  
12 yeah, I don't -- I don't recall  
13 specifically. I'm sorry.  
14 BY MR. THOMAS:  
15 Q: Do you recall generally?  
16 A: Well, I don't think that we -- you  
17 know, I would be -- I would just be  
18 speculating on -- on kind of the conversations  
19 that I -- I may have had with my boss about  
20 it, but -- but we --  
21 Q: I'm not asking you about  
22 conversations with your boss. I'm asking  
23 about steps that the company took in response  
24 to the survey regarding the professionalism or  
25 lack thereof of Thomas Kenny and Todd Awtry.

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1 D. Berardo  
2 MR. SULLIVAN: Objection to form.  
3 THE WITNESS: The company -- you  
4 know, the company didn't find anything in  
5 the survey that would have caused concern  
6 that would have -- you know, that would  
7 have made us take steps to change the -- or  
8 -- or to rectify the situation.  
9 BY MR. THOMAS:  
10 Q: So, for instance, when there were  
11 comments about the vision and strategy of  
12 company, and the comments that came back were  
13 things like:  
14 Thomas Kenny has not told the team  
15 what the company strategy is. Poor  
16 communicator and keeps information to  
17 himself.'  
18 The company did not view that as -- well, you  
19 didn't view that as a problem that needed to  
20 be remedied; correct?  
21 MR. SULLIVAN: Objection to form.  
22 THE WITNESS: I can't say I didn't.  
23 I just don't recall. I mean, as I said  
24 before, there may have been conversations,  
25 and there may have been some type of -- you

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1 D. Berardo  
2 know, I -- I would be speculating. You  
3 know, the company listened to all the  
4 comments, and there may or may not have  
5 been conversations with them about  
6 communicating better.  
7 BY MR. THOMAS:  
8 Q: But you don't -- you -- sitting here  
9 today, you don't recall changing your  
10 opinion -- well, let me read you some more.  
11 A: Sure.  
12 Q: Another comment:  
13 Terrible communication from Thomas  
14 Kenny and Todd Awtry. Unclear strategy.  
15 Poor decision-making. Questioning  
16 integrity of company.'  
17 That -- that was not something that made you  
18 change your view of Thomas and Todd?  
19 A: So --  
20 MR. SULLIVAN: Objection to form.  
21 THE WITNESS: There were -- there  
22 were hundreds or maybe even thousands of  
23 comments in the survey, and so -- we looked  
24 at the survey as a whole, so those  
25 individual comments did not change my view.

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1 D. Berardo  
2 MR. THOMAS: If I could ask the court  
3 reporter to give Mr. Berardo a copy of  
4 Exhibit 67. So that was Awtry 67.  
5 THE COURT REPORTER: Do you mind if  
6 we go off the record so I can get it out of  
7 the box?  
8 MR. THOMAS: Off the record, on the  
9 record, however you would like.  
10 THE COURT REPORTER: Okay. We should  
11 go off.  
12 MR. THOMAS: If you want to go off,  
13 I'm fine with that. If you want to stay  
14 on, we can. Either way.  
15 THE COURT REPORTER: Okay. Thanks.  
16 VIDEOGRAPHER: Going off record. The  
17 time is 11:31.  
18 (PROCEEDINGS RECESSED AT 11:31?A.M.)  
19 (PROCEEDINGS RECONVENED AT 11:32?A.M.)  
20 VIDEOGRAPHER: We're back on the  
21 record. The time is 11:32.  
22 BY MR. THOMAS:  
23 Q: Mr. Berardo, I'm showing you what has  
24 previously been marked as Awtry Exhibit 67.  
25 If you can take some time and look through

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1 D. Berardo  
2 that. And this is -- this is a document you  
3 saw on Monday too; correct?  
4 A: It may -- it may have been. I  
5 didn't -- we didn't review it in detail. So  
6 this is -- this looks similar, yes.  
7 Q: Okay. What I would like you to do is  
8 read the document -- take your time -- and let  
9 me know if there's any positive comments in  
10 here about Thomas Kenny or Todd Awtry.  
11 MR. SULLIVAN: Objection to form.  
12 THE WITNESS: Okay. So you want me  
13 to read all 29 pages?  
14 BY MR. THOMAS:  
15 Q: If you would like, yes.  
16 A: Okay.  
17 Q: Oh, one thing before you do that,  
18 Mr. Berardo, who -- ELT at Absolute refers to  
19 the 'executive leadership team'; right?  
20 A: That's correct.  
21 Q: Who was on the executive leadership  
22 team in the end of -- or, let's say, in August  
23 of 2014?  
24 A: It -- I don't -- I -- I can't recall  
25 names specifically. It would be the head of

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1 D. Berardo  
2 each department. I'm sure someone could get  
3 that information for you.  
4 Q: But that was -- Thomas and Todd were  
5 two of those people; correct?  
6 A: Thomas for sure. Todd, I would  
7 assume. But I don't know for certain.  
8 Q: All right. Go ahead and -- and you  
9 can read the report, and let me know if  
10 there's anything positive in there about  
11 either -- either of them.  
12 MR. SULLIVAN: Objection to form.  
13 THE WITNESS: Can I use your -- do  
14 you want me to highlight them -- do you  
15 want me to highlight any positives, and  
16 then read them to you after? Or do you  
17 want me to read them as I go?  
18 BY MR. THOMAS:  
19 Q: Yeah, you can read them to me -- you  
20 can read them to me at the end. Yeah.  
21 A: At the end? Okay.  
22 Q: Or now. Or now, if you would like  
23 to. If you've found any.  
24 A: Sure. I will just read them as I go,  
25 then. I -- it's going to be -- it depends on

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1 D. Berardo  
2 who you ask if this is positive or not, but  
3 this -- this says:  
4 Transitional feel will start to  
5 settle nicely as the necessary roles are  
6 filled.'  
7 I'm not sure what that refers to.  
8 Q: I -- right now, I'm asking about  
9 positive comments about Thomas or Todd. Is  
10 that a positive comment about Thomas or Todd?  
11 A: It -- it may have been. It may not  
12 have been. I don't know. It doesn't -- it  
13 doesn't state the names.  
14 Q: I'm not asking you to speculate. I'm  
15 only asking you to -- when you look at -- when  
16 you look at something -- something that you  
17 know is positive about the staff.  
18 A: Sure. With their names attached?  
19 Q: I presume so, unless there's some  
20 other way you can identify that they're being  
21 referred to.  
22 A: So -- yeah, so there was nothing --  
23 nothing specific that I saw that called --  
24 called out Thomas and TK -- sorry, I just keep  
25 on saying 'Thomas and TK' -- Thomas and Todd,

<p style="text-align: right;">Page 37</p> <p>1 D. Berardo</p> <p>2 you know, complimenting them or -- or being</p> <p>3 positive.</p> <p>4 Q: Okay. What was the purpose of this</p> <p>5 survey?</p> <p>6 A: It was to gather -- gather feedback</p> <p>7 from employees on a wide range of topics and</p> <p>8 to help guide kind of some key -- key</p> <p>9 strategic initiatives over the course of the</p> <p>10 next year or 18 months.</p> <p>11 Q: And how was the information in the</p> <p>12 surveys used to derive key strategic</p> <p>13 decisions?</p> <p>14 A: Well, we --</p> <p>15 Q: Or what was the word you used? Key</p> <p>16 strategic? What was it?</p> <p>17 A: I don't recall what I said, sorry.</p> <p>18 Strategic initiatives?</p> <p>19 Q: Initiatives.</p> <p>20 A: Yeah.</p> <p>21 Q: So how -- how would the survey help</p> <p>22 that?</p> <p>23 A: We identified -- I mean, I'm --</p> <p>24 I'm -- I can't remember everything that we</p> <p>25 did. One of the -- one of the -- one of the</p>	<p style="text-align: right;">Page 39</p> <p>1 D. Berardo</p> <p>2 about the positive, or lack thereof, comments</p> <p>3 about Thomas and Todd. I would like to now</p> <p>4 read you several sections from the report. I</p> <p>5 will start on page DEFS1387:</p> <p>6 Thomas Kenny has not told the team</p> <p>7 what the corporate strategy is. Poor</p> <p>8 communicator and keeps information to</p> <p>9 himself.'</p> <p>10 Next comment, same page:</p> <p>11 Terrible communication from Thomas</p> <p>12 Kenny and Todd Awtry. Unclear strategy.</p> <p>13 Poor decision-making. Questioning</p> <p>14 integrity of company.'</p> <p>15 Turning to the next page, there's a comment:</p> <p>16 Key leadership roles are leaving.</p> <p>17 The wrong people. Thomas Kenny and Todd</p> <p>18 Awtry have pushed out the executives; i.e.,</p> <p>19 Abigail Maines. Upper management should</p> <p>20 not have let this happen.'</p> <p>21 Turning to page DEFS01390:</p> <p>22 No manager. ELT has no integrity.</p> <p>23 Thomas Kenny allows Todd Awtry to hire a</p> <p>24 sibling; i.e., nepotism. Trust is broken.</p> <p>25 No one will trust him.'</p>
<p style="text-align: right;">Page 38</p> <p>1 D. Berardo</p> <p>2 things --</p> <p>3 Q: And I'm -- I'm sorry. I'm actually</p> <p>4 asking a different -- different question.</p> <p>5 At -- at a general level, why was this survey</p> <p>6 helpful in deriving key strategic initiatives?</p> <p>7 A: Yeah.</p> <p>8 Q: How would it be used in that process?</p> <p>9 A: Yeah, and I --</p> <p>10 MR. SULLIVAN: Objection to form.</p> <p>11 THE WITNESS: And I should say this</p> <p>12 was kind of specific to the people,</p> <p>13 culture, HR, not necessarily business --</p> <p>14 business strategic decisions. Why it would</p> <p>15 be helpful is because it -- the feedback</p> <p>16 comes directly from employees, and -- and</p> <p>17 we want to ensure that we have an engaged</p> <p>18 workforce. And so figuring out what is --</p> <p>19 what the main issues are in the company and</p> <p>20 then trying to rectify them is something</p> <p>21 that's important -- was important in this</p> <p>22 company, but is important in any company, I</p> <p>23 think.</p> <p>24 BY MR. THOMAS:</p> <p>25 Q: All right. Well, we -- we talked</p>	<p style="text-align: right;">Page 40</p> <p>1 D. Berardo</p> <p>2 Next quote on that page:</p> <p>3 No manager did more than one year.</p> <p>4 Lack of communication and connection</p> <p>5 between Thomas Kenny and Todd Awtry and</p> <p>6 sales.'</p> <p>7 Next comment, same page:</p> <p>8 The new RD hiring of Kenny affected</p> <p>9 ELT integrity.'</p> <p>10 Turning to the next page of the survey,</p> <p>11 DEFS1391 (as read):</p> <p>12 Level of two-way communication from</p> <p>13 the ELT has decreased greatly over the past</p> <p>14 -- over the last nine months.'</p> <p>15 Next page, DEFS01392:</p> <p>16 Strongly supported by media manager.</p> <p>17 Great deal of respect for this person.</p> <p>18 Communication in Abigail Maines departure</p> <p>19 was not handled properly. Felt inaccurate.</p> <p>20 Thomas Kenny wanting to cover himself for</p> <p>21 blame. Very typical behaviour.'</p> <p>22 Turning to the next page, DEFS1393:</p> <p>23 Disjointed organization. Thomas</p> <p>24 Kenny and Todd Awtry messed up sales</p> <p>25 organization. Ineffective multiple</p>

<p style="text-align: right;">Page 41</p> <p>1 D. Berardo</p> <p>2 reporting for different positions.</p> <p>3 Demotivated employees equals low sales.'</p> <p>4 Turning to DEFS1395:</p> <p>5 Current leadership of Todd Awtry and</p> <p>6 Thomas Kenny not receptive to any kind of</p> <p>7 feedback.'</p> <p>8 Turning to DEFS1397:</p> <p>9 Had a good team leader. Abigail</p> <p>10 Maines let go, who was great. What has</p> <p>11 Thomas Kenny contributed? Was it worth</p> <p>12 it?'</p> <p>13 Next quote:</p> <p>14 Staff are afraid to speak about</p> <p>15 management. Not encouraged. If you speak</p> <p>16 up, you will lose your job.'</p> <p>17 Next page (as read):</p> <p>18 Get Abigail Maines back. Promote to</p> <p>19 help and retain relationship with other</p> <p>20 companies. Move -- need to move Thomas</p> <p>21 Kennedy [sic] and 'sidekick' Todd Awtry,</p> <p>22 who does not belong, and ensure we retain</p> <p>23 the talent we already have.'</p> <p>24 And turning to page DEFS1411 (as read):</p> <p>25 Current leadership of Todd and Thomas</p>	<p style="text-align: right;">Page 43</p> <p>1 D. Berardo</p> <p>2 new sales manager. Claim that a local</p> <p>3 candidate could not be found is essentially</p> <p>4 dishonest. The sales team has serious</p> <p>5 reservations about the ability to have an</p> <p>6 open and honest relationship with the new</p> <p>7 manager. Seem to be no efforts to brand</p> <p>8 Absolute as the leader in any area -- in</p> <p>9 any arena. Customers do not recognize our</p> <p>10 name. Aren't seen as a leader in any of</p> <p>11 our competitive spaces.'</p> <p>12 Now, given those comments about the people,</p> <p>13 culture, and HR, what did you do in terms of</p> <p>14 working with Thomas and Todd to derive key</p> <p>15 strategic initiatives based on you what saw in</p> <p>16 the survey?</p> <p>17 MR. SULLIVAN: Objection to form.</p> <p>18 THE WITNESS: So -- so my role was</p> <p>19 not to -- I -- I didn't have the capacity</p> <p>20 to work with each individual department.</p> <p>21 My role was to work on the HR initiatives</p> <p>22 for the company as a whole.</p> <p>23 BY MR. THOMAS:</p> <p>24 Q: What did Absolute do to rectify the</p> <p>25 issues that were raised in the survey in</p>
<p style="text-align: right;">Page 42</p> <p>1 D. Berardo</p> <p>2 Kennedy -- Thomas Kenny grossly</p> <p>3 under-qualified. Becomes more and more</p> <p>4 apparent with decisions being made and the</p> <p>5 direction they are taking the company. ELT</p> <p>6 and the board not seriously concerned. No</p> <p>7 communication from leadership team,</p> <p>8 prioritization of non-impactful decisions,</p> <p>9 questions around the rapid build-up of the</p> <p>10 CER team. Don't currently have the</p> <p>11 existing business to keep the people in a</p> <p>12 position adequately occupied. The VAR</p> <p>13 program is designed to increase business.</p> <p>14 It has gotten off to an incredibly slow</p> <p>15 start. Need to put some focus on</p> <p>16 marketing. There are major concerns about</p> <p>17 lack of adversity throughout the company.</p> <p>18 Only have one female member of the ELT.</p> <p>19 Have no female representation on the</p> <p>20 management team listed on our website, nor</p> <p>21 on our board. Women at Absolute are paid</p> <p>22 less than their counterparts. Difficult</p> <p>23 for them to advance their careers and</p> <p>24 increase their earnings. Ethical question</p> <p>25 regarding nepotism and the hiring of the</p>	<p style="text-align: right;">Page 44</p> <p>1 D. Berardo</p> <p>2 regard to Thomas Kenny and Todd Awtry?</p> <p>3 MR. SULLIVAN: Objection to form.</p> <p>4 THE WITNESS: I don't recall, and --</p> <p>5 I -- I don't recall.</p> <p>6 BY MR. THOMAS:</p> <p>7 Q: But the purpose of the survey was to</p> <p>8 have these issues raised and then rectify</p> <p>9 them; right?</p> <p>10 MR. SULLIVAN: Objection to form.</p> <p>11 THE WITNESS: In -- in general, yes.</p> <p>12 As I mentioned before, there are thousands</p> <p>13 of comments, so it would be unlikely that</p> <p>14 we would be able to address every single</p> <p>15 comment in the survey.</p> <p>16 BY MR. THOMAS:</p> <p>17 Q: I'm not asking about every single</p> <p>18 comment in the survey. I'm talking about the</p> <p>19 multiple comments I just read to you. That</p> <p>20 was not something Absolute chose to address?</p> <p>21 MR. SULLIVAN: Objection to form.</p> <p>22 THE WITNESS: I don't have that</p> <p>23 information. It may have been. I don't --</p> <p>24 I -- I may have had conversations -- I -- I</p> <p>25 would just be speculating. I don't recall.</p>

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1 D. Berardo  
 2 BY MR. THOMAS:  
 3 Q: Well, I don't want your speculation.  
 4 A: Sure.  
 5 Q: I want your direct knowledge of  
 6 anything that Absolute did to rectify the  
 7 issues that were raised in the survey, which  
 8 was one of the purposes of the survey.  
 9 A: I don't --  
 10 MS. LESTRADE: Objection.  
 11 THE WITNESS: I don't -- I don't  
 12 have -- I don't have the -- I don't recall.  
 13 I don't recall what the company did,  
 14 specifically.  
 15 BY MR. THOMAS:  
 16 Q: And you were head of HR at this time?  
 17 A: That's correct.  
 18 Q: And do you have any documents that  
 19 would refresh your recollection of anything  
 20 that occurred?  
 21 A: Maybe. I mean, I don't have any  
 22 documents in front of me. There may be  
 23 emails. I don't recall the...  
 24 Q: And you are telling -- are you saying  
 25 under oath that after reading the comments in

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1 D. Berardo  
 2 these surveys, you continued to believe that  
 3 Thomas Kenny and Todd Awtry brought a level of  
 4 professionalism in terms of sales to Absolute?  
 5 MR. SULLIVAN: Objection to form.  
 6 THE WITNESS: Yes, I did, after the  
 7 survey. Correct.  
 8 BY MR. THOMAS:  
 9 Q: Okay. What in the survey made you  
 10 think they brought in a level of  
 11 professionalism to the sales force at  
 12 Absolute?  
 13 MR. SULLIVAN: Objection to form.  
 14 THE WITNESS: So the surveys is one  
 15 point in --  
 16 BY MR. THOMAS:  
 17 Q: Sorry, let me -- let me rephrase that  
 18 question. What, if anything, in this survey  
 19 led you to believe that they brought a level  
 20 of professionalism to Absolute?  
 21 MR. SULLIVAN: Objection to form.  
 22 THE WITNESS: I mean, the surveys at  
 23 one point in time -- I -- I understood,  
 24 from a holistic point of view, that change  
 25 is hard for people, and it always is very

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1 D. Berardo  
 2 difficult for people. And so any time --  
 3 any time there's -- any time there's change  
 4 in organization, there's going to be people  
 5 that are -- that are not happy with that  
 6 change.  
 7 So -- so my understanding, when I  
 8 read the survey, there obviously are  
 9 various comments on different things, but  
 10 when you -- when you look at it from a --  
 11 from a bigger picture, it didn't change my  
 12 view about Thomas and Todd coming in to  
 13 kind of button up the -- the sales  
 14 organization.  
 15 BY MR. THOMAS:  
 16 Q: What comment in here made you think  
 17 they were -- they came in and buttoned up the  
 18 sales organization?  
 19 MR. SULLIVAN: Objection to form.  
 20 THE WITNESS: There were no comments  
 21 in here that -- that did that.  
 22 BY MR. THOMAS:  
 23 Q: Okay. And you did the survey to  
 24 understand how the people and culture in HR  
 25 roles were viewed within the company; right?

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1 D. Berardo  
 2 MR. SULLIVAN: Objection to form.  
 3 THE WITNESS: Sorry, can you repeat  
 4 that question.  
 5 BY MR. THOMAS:  
 6 Q: Yes.  
 7 Can the court reporter read it back,  
 8 please.  
 9 (REPORTER READ BACK)  
 10 MR. SULLIVAN: Objection to form.  
 11 THE WITNESS: The people and culture  
 12 in HR roles. Sorry, I still don't --  
 13 BY MR. THOMAS:  
 14 Q: I believe you referred to the people,  
 15 culture, and HR roles earlier as being what  
 16 this survey was looking at. Am I correct on  
 17 that?  
 18 A: People, culture, and HR roles. I  
 19 mean, the -- it wasn't looking at HR roles.  
 20 We were --  
 21 Q: Was it looking at people and culture  
 22 of the company?  
 23 A: Yeah, we were -- it -- it tries to  
 24 get the -- an understanding of the level of  
 25 engagement within the company.



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1 D. Berardo  
2 Q: Do you have any reason to believe the  
3 survey was done inaccurately?  
4 A: We used a third-party vendor and --  
5 who was -- who was a professional company that  
6 did surveys and had scientific backings around  
7 the questions that they asked. So there's no  
8 reason for me to believe that the way we  
9 worded the survey or how we conducted the  
10 survey was -- was incorrect.  
11 Q: Or the results are inaccurate? Did  
12 you think the results were inaccurate?  
13 A: No.  
14 MR. SULLIVAN: Objection to form.  
15 THE WITNESS: No, I did not.  
16 BY MR. THOMAS:  
17 Q: Did you share the results of the  
18 survey with Todd Awtry?  
19 A: Yes. I mean, just from this email,  
20 it looks like I did. Wait. Hold on. Sorry.  
21 The email was sent to Thomas Kenny. So I  
22 only -- it looks like I only sent it to -- to  
23 Thomas. I don't recall if I had shared this  
24 with Todd.  
25 Q: Did -- to what degree, if any, did

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1 D. Berardo  
2 reading the survey raise concerns in your mind  
3 about how Thomas Kenny and Todd Awtry were  
4 running their sales team?  
5 MR. SULLIVAN: Objection to form.  
6 THE WITNESS: I can't -- I can't  
7 recall -- I can't recall what I was  
8 thinking at that time.  
9 BY MR. THOMAS:  
10 Q: Sitting here today, what does it make  
11 you think about how Thomas and Todd were  
12 running their sales team?  
13 MR. SULLIVAN: Objection to form.  
14 THE WITNESS: I mean, again, the -- I  
15 look at -- I mean, I -- I look at -- when I  
16 look at employee surveys, I look at -- you  
17 know, there -- there's a lot more than the  
18 comments as well. There -- there are  
19 the -- you know, there's the numerical  
20 values that go with each question.  
21 BY MR. THOMAS:  
22 Q: Where's the numerical values?  
23 A: I don't know. I mean, they're part  
24 of the survey, obviously.  
25 Q: Do you think -- do you know if there

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1 D. Berardo  
2 are any numerical values?  
3 A: Well, it wouldn't -- there would be  
4 numerical values based on each question,  
5 asking people to rate --  
6 MR. THOMAS: Okay. Well, first of  
7 all, let me request a production of those  
8 numerical values.  
9 BY MR. THOMAS:  
10 Q: But I'm asking you, sitting here  
11 today with that survey in front of you, how  
12 does that make you feel about how Thomas and  
13 Todd were conducting themselves in terms of  
14 their employees in the sales organization?  
15 MR. SULLIVAN: Objection to form.  
16 THE WITNESS: Well, I -- I would -- I  
17 would -- the feedback that I would give,  
18 sitting here today, is that it seemed like  
19 communication wasn't as good as it could  
20 have been with the strategy. And so I  
21 would -- I would likely give the feedback  
22 to improve communication.  
23 BY MR. THOMAS:  
24 Q: Let me ask you -- so from an HR  
25 perspective, sitting here today, when you look

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1 D. Berardo  
2 at that report, what is your observation about  
3 how Thomas and Todd were conducting themselves  
4 in the sales organization?  
5 MR. SULLIVAN: Objection to form.  
6 THE WITNESS: I mean, I -- I don't --  
7 you're asking me here today, but how they  
8 were conducting themselves was five years  
9 ago, so it's hard for me to sit here to  
10 answer that question when I'm reading a  
11 survey that's -- you know, I just don't  
12 have --  
13 BY MR. THOMAS:  
14 Q: Well, this is -- let's go through  
15 this. This is a survey you commissioned;  
16 correct?  
17 A: That's correct, yeah.  
18 Q: And you did the survey so that you  
19 could get feedback from employees; correct?  
20 A: Correct, yes.  
21 Q: And you feel the feedback was  
22 accurate?  
23 A: I mean, the -- the feedback -- the  
24 feedback were people's opinions, yes.  
25 Q: Which is what you were soliciting?



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1 D. Berardo  
2 A: Correct, yes.  
3 Q: And you have an extensive background  
4 in human resources; correct?  
5 A: Yeah, we went through my background,  
6 so I'm not sure if you call it 'extensive' at  
7 this point, but it -- that would be -- if  
8 that's your opinion, then, okay.  
9 Q: Do you have a graduate degree in  
10 human resources?  
11 A: I have a -- I have a management  
12 certificate from BCIT.  
13 Q: In human resources?  
14 A: That's correct, yes.  
15 Q: And how long have you been doing  
16 human resources?  
17 A: Since 2006.  
18 Q: Okay. So with that as background and  
19 the survey that you commissioned to find out  
20 what -- how the sales organization was being  
21 run and that you believe is accurate, what is  
22 your view as to how Thomas Kenny and Todd  
23 Awtry were performing in terms of the sales  
24 organization?  
25 MR. SULLIVAN: Objection to form.

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1 D. Berardo  
2 THE WITNESS: So I need to say the  
3 survey was not conducted to see how the  
4 sales organization was running; it was  
5 conducted for the entire company. So  
6 it's -- it's difficult for me to answer --  
7 BY MR. THOMAS:  
8 Q: Let's just focus on the sales --  
9 let's just focus on the sales portion of it.  
10 A: Sure. I mean, my answer hasn't  
11 changed from the last time you asked.  
12 Q: Which was that communication was  
13 lacking --  
14 A: From reading --  
15 Q: -- at least?  
16 A: From reading this, it seemed like  
17 there -- there could be improved  
18 communication. From reading the comments,  
19 yes.  
20 Q: And you remember no steps that you  
21 took or that Absolute took when you were head  
22 of HR to remedy that; correct?  
23 MR. SULLIVAN: Objection to form.  
24 THE WITNESS: Yeah, I mean, again, I  
25 just can't remember the specifics.

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1 D. Berardo  
2 BY MR. THOMAS:  
3 Q: And you characterized their  
4 performance as being buttoned-up and  
5 professional; correct?  
6 A: I -- that was my -- that was my  
7 opinion or my overall view.  
8 Q: Does -- does seeing this report  
9 change that?  
10 A: No. I mean, I saw the report when it  
11 came out.  
12 Q: So did your view of Thomas and Todd's  
13 performance remain just the same about them  
14 being buttoned-up and professional before  
15 reading this report as it was after?  
16 A: I mean, in general, yes, from what I  
17 recall.  
18 Q: And you took no steps in regards to  
19 the issues that were raised there?  
20 A: No, I didn't say that. I said that I  
21 don't recall the steps that were taken.  
22 Can I take a break?  
23 MR. SULLIVAN: Sure.  
24 MR. THOMAS: Yeah.  
25 VIDEOGRAPHER: Going off record. The

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1 D. Berardo  
2 time is 12:22.  
3 (PROCEEDINGS RECESSED AT 12:22?P.M.)  
4 (PROCEEDINGS RECONVENED AT 12:33 P.M.)  
5 VIDEOGRAPHER: Back on the record.  
6 The time is 12:33.  
7 MR. THOMAS: Oh, I need to take a  
8 call here. Hang on. I'll be -- I'll be  
9 right back.  
10 VIDEOGRAPHER: Going off record. The  
11 time is 12:33.  
12 (PROCEEDINGS RECESSED AT 12:33?P.M.)  
13 (PROCEEDINGS RECONVENED AT 12:38 P.M.)  
14 VIDEOGRAPHER: Back on the record.  
15 The time is 12:38.  
16 BY MR. THOMAS:  
17 Q: All right. Mr. Berardo, what would  
18 more, in your -- based on your personal  
19 knowledge, what would more accurately reflect  
20 the observations of the professionalism of  
21 Thomas Kenny and Todd Awtry's interactions  
22 with employees; what we see in the survey or  
23 your -- or your recollection five years later?  
24 MR. SULLIVAN: Objection to form.  
25 THE WITNESS: Sorry, I don't -- I

1 D. Berardo  
2 don't know how to answer that question. I  
3 don't understand the question.  
4 BY MR. THOMAS:  
5 Q: What part of it don't you understand?  
6 A: Can you repeat the question.  
7 Q: Sure.  
8 Can the court reporter read it back.  
9 (REPORTER READ BACK)  
10 MR. SULLIVAN: Objection to form.  
11 THE WITNESS: Are we -- are you  
12 asking for my opinion?  
13 BY MR. THOMAS:  
14 Q: Not for your opinion. Based on --  
15 based on your knowledge of how well you  
16 recollect things and how well the survey was  
17 done, which do you -- which, in your  
18 understanding personally, would be more  
19 accurate?  
20 MR. SULLIVAN: Objection to form.  
21 THE WITNESS: Well, so this -- again,  
22 the survey was taken in -- at one point in  
23 time over the course of two weeks, and my  
24 observations was over the course of two or  
25 three years, so I -- I would -- I -- you

1 D. Berardo  
2 know, I would say that my recollection  
3 overall is probably more accurate than  
4 the -- than the employee survey.  
5 BY MR. THOMAS:  
6 Q: Do you have any reason to believe  
7 employees felt any better about Thomas and  
8 Todd in the weeks and years after the survey  
9 while you were still employed there than they  
10 did at the time the survey was taken?  
11 MR. SULLIVAN: Objection to form.  
12 THE WITNESS: Yes. I mean, I think,  
13 from what I recall, the communication did  
14 get better. And, you know, we didn't do  
15 any formal -- unfortunately, we didn't do  
16 any -- we didn't do a follow-up survey  
17 after this before I had left Absolute,  
18 but -- but my observations were that things  
19 were better.  
20 BY MR. THOMAS:  
21 Q: Didn't you -- well, first of all,  
22 didn't you do a survey -- a culture survey  
23 June 1st, 2015?  
24 A: I -- it's -- I don't recall, but  
25 it's -- it's -- it's possible. Do we -- I

1 D. Berardo  
2 don't know if we have a copy of it or...  
3 Q: Well, that -- by the guiding  
4 coalitions, was it -- it was performed -- it  
5 was done by the guiding coalition?  
6 A: Oh, there was -- we -- we did do a --  
7 we -- we -- we did it -- it's possible we did  
8 a -- I -- the guiding coalition was to  
9 discover what our values were at Absolute. So  
10 I -- I don't recall if that was a full survey.  
11 Q: Okay. Do you -- do you remember  
12 referring to it as a 'corporate cultural  
13 assessment survey'?  
14 A: I -- I don't recall what it was  
15 called.  
16 MR. THOMAS: Okay. We would request  
17 the production of that survey and the  
18 results of it.  
19 BY MR. THOMAS:  
20 Q: Did you have any other -- were you  
21 aware that Todd Awtry performed a survey,  
22 monthly survey of his sales employees  
23 regarding their views of his performance?  
24 A: I don't -- I don't recall. Not --  
25 I'm not answering that it -- it didn't happen;

1 D. Berardo  
2 I just don't recall off the top of my head  
3 right now.  
4 Q: Is there any other data points that  
5 you can point to that would indicate employees  
6 felt that Thomas and Todd did a better job  
7 after the survey was performed --  
8 MR. SULLIVAN: Objection to form.  
9 BY MR. THOMAS:  
10 Q: -- during the time that you were  
11 there?  
12 A: Any -- any, like, surveys or any --  
13 anything that was written down?  
14 Q: Any data points whatsoever.  
15 MR. SULLIVAN: Objection to form.  
16 THE WITNESS: I mean, just -- just, I  
17 guess, observations, from what I recall.  
18 And --  
19 BY MR. THOMAS:  
20 Q: Did you observe at the time -- did  
21 you observe -- at the time that Exhibit --  
22 Awtry Exhibit 67 was being done, did you  
23 observe that people didn't like working with  
24 Thomas and Todd?  
25 MR. SULLIVAN: Objection to form.

<p style="text-align: right;">Page 61</p> <p>1 D. Berardo</p> <p>2 THE WITNESS: Sorry, can -- can you</p> <p>3 repeat the --</p> <p>4 BY MR. THOMAS:</p> <p>5 Q: And felt they were unprofessional?</p> <p>6 A: Can you repeat the question?</p> <p>7 Q: Sure.</p> <p>8 When -- well, first of all, we will</p> <p>9 request the production of the survey, monthly</p> <p>10 survey by Todd Awtry.</p> <p>11 But, additionally, let's talk about</p> <p>12 the survey. You were aware that Thomas and</p> <p>13 Todd had problems in terms of communicating</p> <p>14 with their employees, in terms of employees'</p> <p>15 view of their professionalism, in terms of</p> <p>16 employees' view of their trust in them.</p> <p>17 Correct? You were aware of -- you were aware</p> <p>18 of that; correct?</p> <p>19 MR. SULLIVAN: Objection to form.</p> <p>20 THE WITNESS: So I -- I read the</p> <p>21 employee survey, but I wouldn't</p> <p>22 characterize it like you characterized it.</p> <p>23 BY MR. THOMAS:</p> <p>24 Q: What -- what -- what of my</p> <p>25 characterization don't you agree with?</p>	<p style="text-align: right;">Page 63</p> <p>1 D. Berardo</p> <p>2 THE WITNESS: I don't recall. I</p> <p>3 don't remember.</p> <p>4 BY MR. THOMAS:</p> <p>5 Q: You don't recall them surprising you?</p> <p>6 A: No, I just don't recall what my</p> <p>7 reaction was.</p> <p>8 Q: Were you concerned at all about the</p> <p>9 comment that was made about how women were</p> <p>10 being treated by Absolute?</p> <p>11 MR. SULLIVAN: Objection to form.</p> <p>12 THE WITNESS: I don't -- I don't</p> <p>13 recall that -- I don't recall my reaction</p> <p>14 to that comment.</p> <p>15 BY MR. THOMAS:</p> <p>16 Q: So, now, you're -- let me just get</p> <p>17 this straight. You're head of HR when the</p> <p>18 survey comes in; correct?</p> <p>19 A: That's correct.</p> <p>20 Q: How important is it for you, as an HR</p> <p>21 head, to make sure that the company's not</p> <p>22 discriminating against women?</p> <p>23 A: That's --</p> <p>24 MR. SULLIVAN: Objection to form.</p> <p>25 THE WITNESS: It's very important.</p>
<p style="text-align: right;">Page 62</p> <p>1 D. Berardo</p> <p>2 A: There were -- well, in the survey,</p> <p>3 there were people that did talk about the</p> <p>4 communication. Sorry, you also mentioned</p> <p>5 their professionalism?</p> <p>6 Q: Yes. Did you -- did you read that</p> <p>7 survey and felt the people thought they were</p> <p>8 doing a professional job?</p> <p>9 A: Sorry, when I read the survey, did I</p> <p>10 think that they were doing a professional job?</p> <p>11 Q: That people were -- didn't have any</p> <p>12 concerns about their professionalism?</p> <p>13 MR. SULLIVAN: Objection to form.</p> <p>14 THE WITNESS: Just for -- reading it</p> <p>15 now, there were a couple comments that I</p> <p>16 read, but at -- at the time, there was</p> <p>17 nothing overall that -- that caused me</p> <p>18 great concern.</p> <p>19 BY MR. THOMAS:</p> <p>20 Q: That wasn't my question to you. My</p> <p>21 question to you was to be -- well, let me ask</p> <p>22 you -- let me change it. When you got this</p> <p>23 survey in August of 2014, did the comments</p> <p>24 about Todd and Thomas surprise you at all?</p> <p>25 MR. SULLIVAN: Objection to form.</p>	<p style="text-align: right;">Page 64</p> <p>1 D. Berardo</p> <p>2 BY MR. THOMAS:</p> <p>3 Q: One of your most important</p> <p>4 requirements as head of HR?</p> <p>5 MR. SULLIVAN: Objection to form.</p> <p>6 THE WITNESS: It's one of the -- it's</p> <p>7 one of the most important requirements.</p> <p>8 BY MR. THOMAS:</p> <p>9 Q: Okay. And would you take action if</p> <p>10 you heard people saying that women were not</p> <p>11 being treated fairly at Absolute?</p> <p>12 MR. SULLIVAN: Objection to form.</p> <p>13 THE WITNESS: Absolutely. If someone</p> <p>14 came up to me and -- and they -- they --</p> <p>15 they -- of course I would, yes.</p> <p>16 BY MR. THOMAS:</p> <p>17 Q: What happens if they put it in a</p> <p>18 survey?</p> <p>19 MR. SULLIVAN: Objection to form.</p> <p>20 BY MR. THOMAS:</p> <p>21 Q: Would you take action then?</p> <p>22 A: It would --</p> <p>23 MR. SULLIVAN: Objection to form.</p> <p>24 Sorry.</p> <p>25 THE WITNESS: It would be very</p>

<p style="text-align: right;">Page 65</p> <p>1 D. Berardo</p> <p>2 difficult to take action on an anonymous</p> <p>3 survey without specifics.</p> <p>4 BY MR. THOMAS:</p> <p>5 Q: What about a complaint that women</p> <p>6 weren't being treated fairly, and they were</p> <p>7 being paid less? Would you take any action if</p> <p>8 that came to you in a survey, or would you</p> <p>9 just ignore it?</p> <p>10 MR. SULLIVAN: Objection to form.</p> <p>11 THE WITNESS: So -- so being treated</p> <p>12 fairly, there's -- there -- there's nothing</p> <p>13 specific. If there was -- if there's</p> <p>14 something specific, I -- I definitely would</p> <p>15 look into it. Being paid fairly, again,</p> <p>16 this is -- this -- you're asking me what I</p> <p>17 would do now?</p> <p>18 BY MR. THOMAS:</p> <p>19 Q: No, I'm asking you, as head of HR at</p> <p>20 Absolute, was it your policy or practice to</p> <p>21 act on complaints of sex discrimination when</p> <p>22 they came across your desk?</p> <p>23 A: Well, absolutely.</p> <p>24 Q: What would cause you not to act on a</p> <p>25 complaint of discrimination that came across</p>	<p style="text-align: right;">Page 67</p> <p>1 D. Berardo</p> <p>2 where I would give pause and think about</p> <p>3 it. I -- I mean, I -- that's why I said I</p> <p>4 don't know how to answer this question.</p> <p>5 If -- if there was -- if -- if there</p> <p>6 was a -- if there was someone that -- that</p> <p>7 raised some sort of discrimination claim, I</p> <p>8 would take action on it, absolutely.</p> <p>9 BY MR. THOMAS:</p> <p>10 Q: Well, what happens if it -- well,</p> <p>11 let's go to take a look at Exhibit 67,</p> <p>12 DEFS1411. Do you see in the second bullet</p> <p>13 point where it says:</p> <p>14 Women at Absolute are paid less than</p> <p>15 their counterparts. Difficult for them to</p> <p>16 advance their careers and increase their</p> <p>17 earnings'?</p> <p>18 Do you see that?</p> <p>19 A: Yes, I do.</p> <p>20 Q: Did you or did you not read that</p> <p>21 survey in August of 2014?</p> <p>22 A: So I -- I did read the survey. I</p> <p>23 mean, again, there were likely hundreds or</p> <p>24 thousands of comments. But I did my best to</p> <p>25 go through all the -- all the -- all the --</p>
<p style="text-align: right;">Page 66</p> <p>1 D. Berardo</p> <p>2 your desk?</p> <p>3 MR. SULLIVAN: Objection to form.</p> <p>4 THE WITNESS: I don't know -- I'm</p> <p>5 sorry. I don't know how to answer that</p> <p>6 question.</p> <p>7 BY MR. THOMAS:</p> <p>8 Q: Can you think of any circumstances</p> <p>9 where you shouldn't act on it if it came</p> <p>10 across your desk as head of HR, a complaint</p> <p>11 about being discriminated against?</p> <p>12 MR. SULLIVAN: Objection to form.</p> <p>13 THE WITNESS: If -- if someone came</p> <p>14 to me and...</p> <p>15 BY MR. THOMAS:</p> <p>16 Q: I'm not talking about coming to you.</p> <p>17 I'm talking about a report in any way, shape,</p> <p>18 or form coming across your desk. Under what</p> <p>19 circumstances would you ignore it?</p> <p>20 MR. SULLIVAN: Objection to form.</p> <p>21 THE WITNESS: I -- I mean, I don't --</p> <p>22 I mean, I can't think of a million</p> <p>23 different circumstances in my head right</p> <p>24 now. So, I mean, I can't say, absolutely</p> <p>25 certain, that there wouldn't be a case</p>	<p style="text-align: right;">Page 68</p> <p>1 D. Berardo</p> <p>2 all the comments.</p> <p>3 Q: What action did you take in regards</p> <p>4 to the comment I just read you?</p> <p>5 A: I don't recall.</p> <p>6 Q: You don't recall examining the pay</p> <p>7 practices of Absolute to see if women were</p> <p>8 paid less?</p> <p>9 A: No, I don't recall.</p> <p>10 Q: Do you recall looking to see why it</p> <p>11 was difficult for women to advance in their</p> <p>12 careers and increase their earnings?</p> <p>13 MR. SULLIVAN: Objection to form.</p> <p>14 THE WITNESS: I don't recall.</p> <p>15 BY MR. THOMAS:</p> <p>16 Q: Is that something you would recall</p> <p>17 doing?</p> <p>18 MR. SULLIVAN: Objection to form.</p> <p>19 THE WITNESS: I don't -- I don't</p> <p>20 know. I mean, I don't know if I would -- I</p> <p>21 mean, it's a hard question to answer if I</p> <p>22 would recall something, if I would know how</p> <p>23 to -- or I would recall something that I</p> <p>24 may have done in the past. I mean, I don't</p> <p>25 know how to answer that question. I'm</p>

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1 D. Berardo  
2 sorry.  
3 BY MR. THOMAS:  
4 Q: Truthfully is how I would like you to  
5 answer it.  
6 MR. SULLIVAN: Objection to form.  
7 THE WITNESS: Can you -- can you  
8 please repeat the question? Oh, so can you  
9 please repeat the question?  
10 MR. THOMAS: Yeah, the court reporter  
11 -- can the court reporter read it back,  
12 please.  
13 (REPORTER READ BACK)  
14 THE WITNESS: Correct. And, as I  
15 said, I don't recall.  
16 BY MR. THOMAS:  
17 Q: Are you aware of any documents  
18 reflecting any action that you took whatsoever  
19 regarding the complaint about discrimination  
20 about pay disparities within Absolute?  
21 MR. SULLIVAN: Objection to form.  
22 THE WITNESS: I don't -- I don't  
23 recall.  
24 BY MR. THOMAS:  
25 Q: It was one of the most important

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1 D. Berardo  
2 parts of your job. Is that what you had said?  
3 MR. SULLIVAN: Objection to form.  
4 THE WITNESS: Against discrimination,  
5 yes, that's -- that is what I said.  
6 BY MR. THOMAS:  
7 Q: And the reason that you did the  
8 survey, which you believe was done accurately,  
9 was to find out what strategic initiatives  
10 needed to be done in terms of people and  
11 culture and HR at Absolute; correct?  
12 MR. SULLIVAN: Objection to form.  
13 THE WITNESS: For -- for the -- yes,  
14 for HR and people and engagement, yes.  
15 BY MR. THOMAS:  
16 Q: And someone complained to you that  
17 women are not being paid as much as their  
18 counterparts and it's difficult for them to  
19 advance in their careers, and you can remember  
20 doing nothing about that?  
21 MR. SULLIVAN: Objection to form.  
22 THE WITNESS: I don't recall if I --  
23 if we did or did not take any action on  
24 this. I don't recall. I'm sorry.  
25 BY MR. THOMAS:

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1 D. Berardo  
2 Q: Is this something you should have  
3 taken action on?  
4 MR. SULLIVAN: Objection to form.  
5 THE WITNESS: Are you asking me --  
6 BY MR. THOMAS:  
7 Q: Or is it something you would have  
8 ignored?  
9 MR. SULLIVAN: Objection to form.  
10 THE WITNESS: Are you asking me what  
11 I would do right now?  
12 BY MR. THOMAS:  
13 Q: No, I'm asking you at the time, under  
14 Absolute's policies, is this something that  
15 you should have taken a look at?  
16 MR. SULLIVAN: Objection to form.  
17 THE WITNESS: Under Absolute --  
18 BY MR. THOMAS:  
19 Q: Or is it something that you should  
20 have ignored?  
21 MR. SULLIVAN: Objection to form.  
22 THE WITNESS: No, I -- I don't know  
23 the answer -- I don't know the answer to  
24 that. I...  
25 BY MR. THOMAS:

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1 D. Berardo  
2 Q: You don't know if you --  
3 A: I --  
4 Q: -- should have taken any action in  
5 response to a complaint by an employee that  
6 women are paid less than men?  
7 A: So --  
8 MR. SULLIVAN: So objection to form.  
9 THE WITNESS: So this is an anonymous  
10 survey, so -- so, again, if someone came to  
11 me -- if someone came to me, obviously, I  
12 would have taken action. You know, right  
13 now, I mean, I -- I can't think of what I  
14 would have --  
15 BY MR. THOMAS:  
16 Q: I'm not asking you right now.  
17 A: So I -- I -- it's hard for my mind to  
18 go back five years, so that's why I'm saying I  
19 can't recall. So if you're asking me what I  
20 would do now, I can tell you. I just -- I --  
21 you know, I can't reverse my mind five years  
22 ago.  
23 Q: Why can't -- why aren't you sure  
24 about what you were supposed to have done five  
25 years ago?

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1 D. Berardo  
 2 MR. SULLIVAN: Objection to form.  
 3 THE WITNESS: Well, because I  
 4 can't -- I can't recall what I did. So for  
 5 me to just speculate --  
 6 BY MR. THOMAS:  
 7 Q: I'm not asking you what you did. I'm  
 8 asking you what you should have done.  
 9 MR. SULLIVAN: Objection to form.  
 10 BY MR. THOMAS:  
 11 Q: Should you have taken a look at the  
 12 claim that women across the board were being  
 13 paid less than their counterparts at Absolute?  
 14 Should you have looked at that?  
 15 MR. SULLIVAN: Objection to form.  
 16 THE WITNESS: So if I was to look at  
 17 this right now, I -- I -- and someone had,  
 18 you know, pointed this out specifically,  
 19 I -- I would have taken a look.  
 20 MR. THOMAS: Okay. We would like any  
 21 documents that reflect any taking a look or  
 22 any investigation or anything that was done  
 23 by Mr. Berardo in regards to anything that  
 24 relates to the survey, but specifically  
 25 that section.

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1 D. Berardo  
 2 BY MR. THOMAS:  
 3 Q: Do you remember giving the -- the  
 4 survey to Geoff Haydon, the new CEO?  
 5 A: I don't remember that, no.  
 6 Q: Do you remember him requesting that  
 7 he see the names of the employees who made the  
 8 comments?  
 9 A: I don't recall.  
 10 Q: Is it possible that he did?  
 11 MR. SULLIVAN: Objection to form.  
 12 THE WITNESS: I mean, anything is  
 13 possible. It's possible that he said that.  
 14 BY MR. THOMAS:  
 15 Q: Should -- was the survey told to  
 16 employees that it was going to be done  
 17 anonymously?  
 18 A: Yes, it was.  
 19 Q: Would there be any reason that  
 20 Mr. Haydon should have been able to see the  
 21 names of the employees that made the comments?  
 22 MR. SULLIVAN: Objection to form.  
 23 THE WITNESS: I mean, from my  
 24 perspective, no. That's my opinion.  
 25 BY MR. THOMAS:

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1 D. Berardo  
 2 Q: But any perspective, that you're  
 3 aware of?  
 4 A: I mean, I can only give you my  
 5 opinion.  
 6 Q: Well, I'm not -- I'm not asking for  
 7 your opinion. But based on your role as HR  
 8 manager --  
 9 A: Sure.  
 10 Q: -- having conducted the survey and  
 11 working at Absolute, was it appropriate for  
 12 Mr. Haydon to see the names of the people who  
 13 made the comments?  
 14 A: Sure.  
 15 MR. SULLIVAN: Objection to form.  
 16 BY MR. THOMAS:  
 17 Q: From any perspective?  
 18 A: No. No, it would not -- it would not  
 19 have been appropriate.  
 20 Q: I would like to talk about Absolute's  
 21 policy when you worked there in regards to you  
 22 investigating complaints from employees.  
 23 Okay?  
 24 A: Sure.  
 25 Q: Okay. Did Absolute have a policy

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1 D. Berardo  
 2 about investigating complaints coming from  
 3 employees?  
 4 A: You know, I don't have the policy  
 5 manual in -- in front of me, but I believe it  
 6 was in the handbook.  
 7 Q: What was -- what's your understanding  
 8 of what that policy is?  
 9 A: I don't -- I don't recall the  
 10 specific policy. I'm sorry.  
 11 Q: Okay. Well, let me ask you this: If  
 12 someone came to you and complained about how  
 13 they were being treated, was that -- did you  
 14 have a responsibility to investigate that  
 15 complaint?  
 16 A: Absolutely. If it was discrimination  
 17 or -- or harassment, absolutely, I had a  
 18 responsibility.  
 19 Q: Retaliation too?  
 20 A: Retaliation too, absolutely.  
 21 Q: Unfair treatment?  
 22 MR. SULLIVAN: Objection to form.  
 23 THE WITNESS: Unfair treatment of --  
 24 of -- of what?  
 25 BY MR. THOMAS:

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1 D. Berardo  
2 Q: That an employee comes and says  
3 they're being treated unfairly by their  
4 manager in the company. Do you have a duty  
5 to -- did you have a duty to investigate that?  
6 A: Based --  
7 MR. SULLIVAN: Objection to form.  
8 THE WITNESS: Based on their -- based  
9 on their gender or based on their age or --  
10 or based on protected grounds? Or -- or  
11 just that they're not being treated fairly  
12 in their opinion?  
13 BY MR. THOMAS:  
14 Q: Well, let's break it down into two --  
15 two categories. Let's start with a complaint  
16 on any basis. Just that 'I'm being treated  
17 unfairly.' Did you have an obligation to  
18 follow up to see what was going on?  
19 A: Well, I would ask the employee on --  
20 on what basis. You know, a lot of times,  
21 there's -- oftentimes, there's always  
22 disagreements between managers and employees,  
23 so I wouldn't be following up --  
24 Q: No, it wasn't -- sorry. Go ahead.  
25 A: No, I wouldn't be following -- I was

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1 D. Berardo  
2 just going to say I wouldn't be following up  
3 on every single -- every single, you know,  
4 management/employee disagreement, unless it  
5 was something that I had a duty to  
6 investigate.  
7 Q: And what did you consider those  
8 duties to -- the duty to investigate covered  
9 what?  
10 A: Well, anything -- anything that -- if  
11 there was someone who was being discriminated  
12 on -- based on protected grounds, any -- any  
13 sort of bullying or -- or sexual harassment.  
14 Q: You said bullying, sexual harassment,  
15 discriminated. Anything else?  
16 A: I mean, if someone came to me --  
17 any -- any sort of, like, crimes, anything --  
18 fraud, embezzlement. I mean, anything of that  
19 nature, anything illegal.  
20 Q: Would there ever be a reason for --  
21 you described the grounds that you thought you  
22 had a duty to investigate. Would there ever  
23 be a reason not to investigate those types of  
24 complaints?  
25 MR. SULLIVAN: Objection to form.

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1 D. Berardo  
2 THE WITNESS: Not that I'm -- not  
3 that I'm aware of.  
4 BY MR. THOMAS:  
5 Q: And in addition to -- did you have  
6 any obligation besides simply investigating  
7 them? Did you have a duty to remedy the  
8 problems?  
9 MR. SULLIVAN: Objection to form.  
10 THE WITNESS: The -- I mean, the --  
11 the company to investigate and to -- and --  
12 and to remedy the situation. Not just to  
13 investigate, to substantiate the  
14 allegation. If the allegation was  
15 substantiated, then to ensure that -- that  
16 it was corrected.  
17 BY MR. THOMAS:  
18 Q: What level of harassment by a manager  
19 to their -- to their employee was okay at  
20 Absolute?  
21 MR. SULLIVAN: Objection to form.  
22 THE WITNESS: What level of, like,  
23 sexual harassment? Are you asking about  
24 sexual harassment? Or what do you mean,  
25 'harassment'?

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1 D. Berardo  
2 BY MR. THOMAS:  
3 Q: Okay. Well, let's say sexual  
4 harassment. What level of sexual harassment  
5 was okay at Absolute?  
6 A: There was no -- there was no level of  
7 sexual harassment that was okay.  
8 Q: What level of -- is it okay for a  
9 manager at Absolute just simply to harass an  
10 employee, even if it's not sexual?  
11 MR. SULLIVAN: Objection to form.  
12 THE WITNESS: I mean, I would -- I  
13 would need to you clarify what you meant by  
14 'harassment.' If you --  
15 BY MR. THOMAS:  
16 Q: What do you mean by -- when you use  
17 the word 'harassment,' what do you mean by  
18 'harassment'?  
19 A: Well, generally, harassment is sexual  
20 harassment, if -- I mean, if a manager is  
21 stalking someone outside of work. I mean...  
22 Q: What happens if it's not sexual in  
23 nature? Is it okay to be -- for a manager to  
24 harass their employee at Absolute?  
25 MR. SULLIVAN: Objection to form.

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1 D. Berardo  
2 THE WITNESS: Again, I -- I need to  
3 understand specifically the example that  
4 you're asking about.  
5 BY MR. THOMAS:  
6 Q: So there are some -- some forms of  
7 harassment by a manager that might be okay?  
8 MR. SULLIVAN: Objection to form.  
9 THE WITNESS: I -- that's not what I  
10 said.  
11 BY MR. THOMAS:  
12 Q: Well, what about -- why do you -- I  
13 mean, what is confusing to you about the  
14 question?  
15 A: Well, harassment --  
16 MR. SULLIVAN: Objection to form.  
17 THE WITNESS: Harassment can be -- it  
18 can -- it can be defined in many different  
19 ways by many different people, so I --  
20 BY MR. THOMAS:  
21 Q: Give me a definition of harassment  
22 that would be okay -- that someone could  
23 define something as harassment that would be  
24 okay at Absolute.  
25 MR. SULLIVAN: Objection to form.

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1 D. Berardo  
2 THE WITNESS: I mean, the -- the way  
3 I define harassment, I don't think anything  
4 would be okay, if -- if --  
5 BY MR. THOMAS:  
6 Q: And you define it as...?  
7 A: I -- I define it as kind of  
8 nonbusiness -- nonbusiness-type behaviour of a  
9 sexual or nonsexual nature that -- that, you  
10 know, makes the other employee feel  
11 uncomfortable. I mean, again, this is just  
12 off the top of my head, so it's hard for me to  
13 come up with a full definition.  
14 Q: We'll take that definition. Was that  
15 ever okay at Absolute?  
16 MR. SULLIVAN: Objection to form.  
17 THE WITNESS: If -- if someone was  
18 harassing someone for nonbusiness reasons,  
19 no, it was not okay.  
20 BY MR. THOMAS:  
21 Q: If they were harassing them for  
22 business reasons, was it okay?  
23 MR. SULLIVAN: Objection to form.  
24 THE WITNESS: I guess I need to  
25 understand -- I mean, you're asking me

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1 D. Berardo  
2 the -- you're asking me harassment for  
3 business reasons. I don't -- I don't -- I  
4 need to understand what your definition of  
5 harassment is for me to answer that  
6 question.  
7 BY MR. THOMAS:  
8 Q: I'm going off of your definition, and  
9 you said for nonbusiness -- you -- you said  
10 'for nonbusiness reasons.' So I'm asking --  
11 I'm trying to understand what you're talking  
12 about. And so when you say nonbusiness  
13 reasons versus business reasons, what is the  
14 difference between those?  
15 A: Well, there's a lot of times --  
16 Q: In your -- in your -- in your view.  
17 A: Sure. There's a lot of times with a  
18 manager and an employee when there are  
19 uncomfortable conversations about performance;  
20 correct -- changing your performance,  
21 correcting performance. And so, you know,  
22 those -- those types of business conversations  
23 happen in companies all the time.  
24 Q: Is it okay if a manager yells at an  
25 employee during a business conversation?

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1 D. Berardo  
2 MR. SULLIVAN: Objection to form.  
3 THE WITNESS: I mean, in -- in my  
4 view, it's not a best practice.  
5 MR. THOMAS:  
6 Q: Is it -- at Absolute, was that okay?  
7 MR. SULLIVAN: Objection to form.  
8 BY MR. THOMAS:  
9 Q: Like, was that okay for a manager to  
10 do?  
11 MR. SULLIVAN: Objection to form.  
12 THE WITNESS: I mean, I -- I can't  
13 speak on behalf of the company. I mean,  
14 for myself --  
15 BY MR. THOMAS:  
16 Q: Well, I'm asking on behalf of HR for  
17 the company.  
18 A: Well, I said --  
19 Q: As an HR -- as an HR -- as head of  
20 HR, was it okay for managers to yell at  
21 employees about business things?  
22 MR. SULLIVAN: Objection to form.  
23 THE WITNESS: It's -- it's not  
24 something that I would encourage.  
25 Absolutely not. Not a best practice.



<p style="text-align: right;">Page 85</p> <p>1 D. Berardo</p> <p>2 BY MR. THOMAS:</p> <p>3 Q: I'm not asking whether it's a best</p> <p>4 practice. I'm asking if -- was it okay at</p> <p>5 Absolute for a manager to do that?</p> <p>6 MR. SULLIVAN: Objection to form.</p> <p>7 THE WITNESS: I would -- if I found</p> <p>8 out the manager was doing that, I would</p> <p>9 coach the manager on how to communicate a</p> <p>10 bit more effectively.</p> <p>11 BY MR. THOMAS:</p> <p>12 Q: Which would mean not to do it?</p> <p>13 A: Which would mean --</p> <p>14 Q: Not to yell?</p> <p>15 A: -- not to do it, yes.</p> <p>16 Q: Okay. What about falsely accusing</p> <p>17 someone of stealing? Is that something a</p> <p>18 manager should do at Absolute?</p> <p>19 MR. SULLIVAN: Objection to form.</p> <p>20 THE WITNESS: Falsely accusing</p> <p>21 someone of stealing. I mean, if -- if it</p> <p>22 was false, obviously, the manager shouldn't</p> <p>23 be telling an employee that they're</p> <p>24 stealing if they're not stealing. I</p> <p>25 mean...</p>	<p style="text-align: right;">Page 87</p> <p>1 D. Berardo</p> <p>2 A: -- that would not be okay for a</p> <p>3 manager to tell an employee that they're</p> <p>4 stealing when they're not stealing or when</p> <p>5 there's no evidence of stealing.</p> <p>6 Q: And you're saying that -- you said a</p> <p>7 few things, but you're talking about under</p> <p>8 Absolute policy; right? That wouldn't be</p> <p>9 acceptable?</p> <p>10 MR. SULLIVAN: Objection to form.</p> <p>11 THE WITNESS: No, I'm not saying</p> <p>12 under Absolute policy, just because I don't</p> <p>13 have the policies in front of me. I -- I</p> <p>14 don't recall the policies.</p> <p>15 BY MR. THOMAS:</p> <p>16 Q: Do you think it was -- was it your</p> <p>17 understanding that it was okay for people --</p> <p>18 for a manager to falsely accuse someone of</p> <p>19 stealing at Absolute under Absolute's policies?</p> <p>20 MR. SULLIVAN: Objection to form.</p> <p>21 THE WITNESS: Again, I don't have the</p> <p>22 policies in front of me, so I don't recall</p> <p>23 specific policies about anything against</p> <p>24 managers specifically or in the policy</p> <p>25 for -- you know, anything in the policy</p>
<p style="text-align: right;">Page 86</p> <p>1 D. Berardo</p> <p>2 BY MR. THOMAS:</p> <p>3 Q: And that was not allowed at Absolute?</p> <p>4 MR. SULLIVAN: Objection to form.</p> <p>5 BY MR. THOMAS:</p> <p>6 Q: Or was it allowed?</p> <p>7 MR. SULLIVAN: Objection to form.</p> <p>8 THE WITNESS: Was it allowed at</p> <p>9 Absolute? I mean, are you --</p> <p>10 BY MR. THOMAS:</p> <p>11 Q: Was -- let me rephrase the question.</p> <p>12 Was it or was it not allowed at Absolute for</p> <p>13 managers to falsely accuse their employees of</p> <p>14 stealing?</p> <p>15 MR. SULLIVAN: Objection to form.</p> <p>16 THE WITNESS: Again, I don't really</p> <p>17 understand the question. You're asking me</p> <p>18 if it was okay for a manager to tell an</p> <p>19 employee that he or she is stealing when</p> <p>20 they're not stealing. Is that what you're</p> <p>21 asking me?</p> <p>22 BY MR. THOMAS:</p> <p>23 Q: Correct.</p> <p>24 A: So I would say that --</p> <p>25 Q: Yes.</p>	<p style="text-align: right;">Page 88</p> <p>1 D. Berardo</p> <p>2 that would say that managers are not</p> <p>3 allowed to tell employees that they are</p> <p>4 stealing when they're not stealing. I</p> <p>5 don't know if the policy covered that</p> <p>6 specifically.</p> <p>7 BY MR. THOMAS:</p> <p>8 Q: It might have; it might not. Either</p> <p>9 way, it could have -- Absolute -- it could</p> <p>10 have been okay at Absolute for that to happen;</p> <p>11 right?</p> <p>12 A: I --</p> <p>13 MR. SULLIVAN: Objection to form.</p> <p>14 THE WITNESS: That's not what I said.</p> <p>15 BY MR. THOMAS:</p> <p>16 Q: Okay. Sitting here right now, is it</p> <p>17 possible that under Absolute's policy, falsely</p> <p>18 accusing an employee of stealing was okay?</p> <p>19 MR. SULLIVAN: Objection to form.</p> <p>20 THE WITNESS: I don't -- I can't</p> <p>21 answer that question because I don't have</p> <p>22 the policy in front of me, and I -- I don't</p> <p>23 have intimate knowledge with the policy</p> <p>24 right now.</p> <p>25 BY MR. THOMAS:</p>

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1 D. Berardo

2 Q: So it's possible --

3 MR. SULLIVAN: Objection to form.

4 BY MR. THOMAS:

5 Q: -- that that was okay?

6 A: I --

7 Q: Because if it's not possible, the

8 answer is, no, that wasn't allowed under

9 Absolute policy. If you say you're not sure,

10 it means maybe it's possible; maybe it isn't.

11 Right?

12 A: I mean, I'm just saying I just don't

13 recall. I don't recall --

14 Q: Okay.

15 A: -- the policy. I'm sorry.

16 Q: Maybe that sort of thing is what can

17 happen at Absolute?

18 MR. SULLIVAN: Is that a question?

19 MR. THOMAS: Yeah.

20 MR. SULLIVAN: Objection to the form

21 of that question.

22 THE WITNESS: Can you repeat the

23 question, please.

24 BY MR. THOMAS:

25 Q: So maybe it was okay at Absolute for

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1 D. Berardo

2 managers to falsely accuse their employees of

3 stealing? As you sit here today, that might

4 have been okay?

5 MR. SULLIVAN: Objection to form.

6 THE WITNESS: Well, I don't have the

7 information in front of me about the

8 policy, so I -- I can't answer whether it

9 would be okay or not okay.

10 BY MR. THOMAS:

11 Q: But maybe?

12 MR. SULLIVAN: I'm sorry. I didn't

13 hear that. Can you --

14 THE COURT REPORTER: But maybe.

15 MR. SULLIVAN: Oh. Objection to

16 form.

17 I'm sorry. Was that a question again

18 or a statement?

19 MR. THOMAS: A question. Maybe,

20 question mark.

21 MR. SULLIVAN: Objection to form.

22 MS. LESTRADE: Asked and answered.

23 MR. SULLIVAN: And asked and answered

24 multiple times.

25 THE WITNESS: So as I have answered

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1 D. Berardo

2 before, I don't have --

3 BY MR. THOMAS:

4 Q: So let me -- let me -- let me

5 rephrase the question. As you sit here today,

6 you can't foreclose the possibility that

7 Absolute would allow managers to tell their

8 employees that they -- tell their employees

9 falsely that they were stealing stuff; right?

10 MR. SULLIVAN: Objection to form.

11 THE WITNESS: I mean, based on the

12 policy, I -- I just -- I don't have the

13 information to say yes or no to that.

14 BY MR. THOMAS:

15 Q: Based on what your knowledge is of

16 Absolute, do you have the ability to say yes

17 or no to that?

18 MR. SULLIVAN: Objection to form.

19 THE WITNESS: Based on my knowledge

20 of Absolute? So not the policy?

21 BY MR. THOMAS:

22 Q: As serving -- as serving there in --

23 as head of HR for -- or the HR department for

24 four-plus years.

25 MR. SULLIVAN: Objection to form.

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1 D. Berardo

2 THE WITNESS: So I think I have

3 answered the question before, that if -- do

4 I think it's okay for a manager to say to

5 an employee that he or she is stealing when

6 they're not stealing. My opinion is

7 that -- my opinion is that that would not

8 be okay when I was the head of HR.

9 BY MR. THOMAS:

10 Q: And that would be -- and your

11 understanding is that would be against policy

12 when you were head of HR there; correct?

13 A: No.

14 MR. SULLIVAN: Objection to form.

15 THE WITNESS: That is -- that's not

16 my understanding. Because I -- I have

17 already answered that I don't have

18 knowledge of the policy off the top of my

19 head, so I can't answer that question.

20 BY MR. THOMAS:

21 Q: What does -- what did Absolute policy

22 require you in HR to do to remedy harassment

23 of employees by their managers?

24 A: I don't -- I -- I don't recall the

25 specific policy.

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1 D. Berardo  
2 Q: In general. Do they require you to  
3 do anything or not?  
4 A: In -- if someone was sexually -- if  
5 someone has -- had accused someone of sexually  
6 harassing? Is that what you're asking?  
7 Q: Or just harassment on any -- on any  
8 basis -- on any basis, based on their  
9 complaints of discrimination, based on gender.  
10 A: Sure.  
11 MR. SULLIVAN: Objection to form.  
12 THE WITNESS: Sure. If it -- if  
13 there was harassment based on gender or  
14 discrimination, we definitely would have to  
15 investigate.  
16 BY MR. THOMAS:  
17 Q: When you worked at Absolute, did you  
18 consider someone to be complaining about  
19 discrimination only if they specifically said  
20 they were being treated illegally under  
21 discrimination laws?  
22 MR. SULLIVAN: Objection to form.  
23 THE WITNESS: Well, no. I -- someone  
24 could tell me -- you know, someone could  
25 tell me -- you know, if someone told me --

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1 D. Berardo  
2 I mean, someone doesn't have to say 'I was  
3 treated -- I was treated illegally based on  
4 protected grounds.' I mean, they would  
5 likely tell me the circumstances, and then  
6 we could determine if it was sexual  
7 harassment or -- or bullying or -- or  
8 something that they were being  
9 discriminated based on protected grounds.  
10 BY MR. THOMAS:  
11 Q: And it wouldn't be just statements --  
12 you wouldn't require them to make a statement  
13 to you like 'I'm being discriminated against  
14 on the basis of sex' before you would you  
15 consider it a --  
16 A: No.  
17 Q: -- complaint; correct?  
18 A: No. Absolutely. Someone wouldn't  
19 have to specifically say they were being  
20 discriminated on the basis of sex.  
21 Q: If somebody came to you and said --  
22 let's say a woman came to you and said 'all  
23 I'm asking -- all I'm asking is to be treated  
24 the same' in comparison with her male  
25 employees, would you -- would that raise an

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1 D. Berardo  
2 issue of discrimination with you?  
3 MR. SULLIVAN: Objection to form.  
4 THE WITNESS: I -- I would -- I would  
5 talk to that employee to get a -- get some  
6 specifics on -- on what she may be speaking  
7 about.  
8 BY MR. THOMAS:  
9 Q: What happens if a female employee  
10 came to you and said that she just wants to be  
11 paid fairly? Would that -- would you consider  
12 that to be something that you needed to follow  
13 up on in terms of potential discrimination?  
14 MR. SULLIVAN: Objection to form.  
15 THE WITNESS: I would definitely talk  
16 to her about specifics of -- of what she  
17 would be referring to so I could -- I could  
18 investigate further.  
19 BY MR. THOMAS:  
20 Q: What happens if a woman came to you  
21 and said that she wanted to -- when she said  
22 that a male employee was being paid full value  
23 and that she wanted to be paid full value too  
24 for her work?  
25 MR. SULLIVAN: Objection to form.

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1 D. Berardo  
2 BY MR. THOMAS:  
3 Q: Would that have raised a concern in  
4 your mind that you needed to look at potential  
5 discrimination?  
6 MR. SULLIVAN: Objection to form.  
7 THE WITNESS: Again, I -- I would --  
8 I would -- I -- I would talk to the  
9 employee to get -- to gather more  
10 information.  
11 BY MR. THOMAS:  
12 Q: Why?  
13 A: Because I would understand -- want to  
14 understand why the employee -- why the  
15 employee is thinking that way, who is the --  
16 who the employee is comparing themselves to.  
17 We would need to look at, you know, probably a  
18 whole bunch of different factors on, you know,  
19 what job they're doing, what level they're  
20 working at, what their experience, their  
21 background, their education is.  
22 Q: And you would follow up on -- on  
23 comments like that?  
24 MR. SULLIVAN: Objection to form.  
25 THE WITNESS: Yeah, if someone -- if

1 D. Berardo  
2 someone came to me and -- I would  
3 definitely be having that conversation with  
4 that person to -- to gather more  
5 information from that person.  
6 BY MR. THOMAS:  
7 Q: What happens if an employee came to  
8 you and said that she's worried about being  
9 retaliated -- it -- well, strike that.  
10 What happens if an employee came to  
11 you and said that she was worried that she  
12 doesn't want to be known as a "troublemaker"?  
13 Would that raise concerns with you?  
14 MR. SULLIVAN: Objection to form.  
15 THE WITNESS: Well, I mean, it  
16 would -- it would definitely set off some  
17 red flags in my -- in my mind. And I would  
18 -- I would ask some probing questions on --  
19 on why the employee felt that way.  
20 BY MR. THOMAS:  
21 Q: What happens if a female employee  
22 came to you and said that she's being treated  
23 differently than her male counterparts? What  
24 would you do?  
25 MR. SULLIVAN: Objection to form.

1 D. Berardo  
2 THE WITNESS: I would ask -- I -- I  
3 would ask, again, specific questions and  
4 follow up and get -- get some more  
5 specifics from that employee.  
6 BY MR. THOMAS:  
7 Q: These -- is it fair to say all these  
8 types of questions that we went over would be  
9 the types of questions that would raise red  
10 flags in your mind from a discrimination point  
11 of view in HR?  
12 MR. SULLIVAN: Objection to form.  
13 THE WITNESS: It would cause me to  
14 ask some more questions to the employees  
15 for sure.  
16 BY MR. THOMAS:  
17 Q: Because, potentially, the complaints  
18 are about discrimination; right?  
19 MR. SULLIVAN: Objection to form.  
20 THE WITNESS: Potentially.  
21 BY MR. THOMAS:  
22 Q: There are other types of questions  
23 that employees would ask you that wouldn't  
24 raise any red flags, and you wouldn't need to  
25 follow up on; correct? Because they wouldn't

1 D. Berardo  
2 be suggesting discrimination; right?  
3 MR. SULLIVAN: Objection to form.  
4 THE WITNESS: I mean, there's --  
5 yeah, employees could ask me a whole bunch  
6 of different questions that wouldn't raise  
7 red flags for me.  
8 BY MR. THOMAS:  
9 Q: Well, most -- and most of the time,  
10 when employees ask you questions, you don't  
11 feel the need to ask more probing questions to  
12 find out if they're talking about  
13 discrimination. Is that fair to say?  
14 MR. SULLIVAN: Objection to form.  
15 BY MR. THOMAS:  
16 Q: When you were at Absolute?  
17 A: No, that's not fair to say.  
18 Q: Do you say that most -- do you say  
19 that, most of the time employees ask you  
20 questions, you feel the need to probe more to  
21 see if there's discrimination going on?  
22 MR. SULLIVAN: Objection to form.  
23 THE WITNESS: It -- it depends what  
24 kind of questions they've asked -- they  
25 asked me.

1 D. Berardo  
2 BY MR. THOMAS:  
3 Q: Okay. And, in fact, the questions we  
4 just went over would be the types of questions  
5 that would suggest potential discrimination to  
6 you; right?  
7 MR. SULLIVAN: Objection to form.  
8 THE WITNESS: They would cause me to  
9 ask more questions, yes.  
10 BY MR. THOMAS:  
11 Q: Because of discrimination; right?  
12 A: Well, just because, in my head, I --  
13 I would want to understand if -- yeah, if  
14 there was some sort of discrimination or -- or  
15 harassment.  
16 Q: Now, you say that you would ask more  
17 probing questions. How would you -- what do  
18 you mean by that?  
19 MR. SULLIVAN: Objection to form.  
20 THE WITNESS: I would ask some  
21 follow-up -- I mean, it depends on what  
22 they're telling me, but I would ask some  
23 follow-up questions, and I would ask for  
24 specifics so I -- so I could understand the  
25 situation.

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1 D. Berardo  
 2 BY MR. THOMAS:  
 3 Q: Would you document what the employee  
 4 told you?  
 5 MR. SULLIVAN: Objection to form.  
 6 THE WITNESS: I -- I --  
 7 BY MR. THOMAS:  
 8 Q: In response to -- in response to your  
 9 questions?  
 10 MR. SULLIVAN: Objection to form.  
 11 THE WITNESS: Yeah, I -- I would -- I  
 12 mean, yeah, if -- if they were coming to me  
 13 for -- for -- for something that may be  
 14 discriminatory, I would document it.  
 15 BY MR. THOMAS:  
 16 Q: And what sort of follow-up would you  
 17 do after you documented their responses?  
 18 MR. SULLIVAN: Objection to form.  
 19 THE WITNESS: So if there was --  
 20 sorry, if there was discrimination, or if  
 21 there was not discrimination?  
 22 BY MR. THOMAS:  
 23 Q: Well, once you asked the follow-up --  
 24 what would you -- let me ask you this --  
 25 A: Sure.

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1 D. Berardo  
 2 Q: -- what would you do to further  
 3 investigate whether there was discrimination  
 4 based on what the employee said?  
 5 MR. SULLIVAN: Objection to form.  
 6 THE WITNESS: You know, it would --  
 7 it would depend on the -- it would depend  
 8 on the circumstances. I mean, there could  
 9 be thousands of situations, so it really  
 10 would -- it really would depend.  
 11 Oftentimes, we have to look at was there  
 12 anyone else in the room, witnesses. I  
 13 would -- you know, again, this is just  
 14 me -- this is what I would do -- I'm just  
 15 telling you what I would do right now. Not  
 16 back then.  
 17 BY MR. THOMAS:  
 18 Q: I want -- I want to talk about what  
 19 you would do -- what you would do when you  
 20 were head of HR at Absolute.  
 21 A: Sure. I mean, we would -- we would  
 22 have to investigate any sort of  
 23 discriminations, and we would, you know, do so  
 24 by -- I would do so by, you know, raising it  
 25 with our legal counsel to help guide us

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1 D. Berardo  
 2 through that of -- of any -- with any sort of  
 3 investigations that we may have to -- we may  
 4 have to conduct.  
 5 Q: Would you raise the issues with the  
 6 people who were being accused of doing the  
 7 discrimination?  
 8 MR. SULLIVAN: Objection to form.  
 9 THE WITNESS: It's based on -- based  
 10 on the -- it's -- it's based on -- I mean,  
 11 it would be based on the circumstances,  
 12 but, oftentimes, you do have to interview  
 13 the witnesses, and -- and those that are  
 14 being accused to come up with the -- with  
 15 the answer.  
 16 BY MR. THOMAS:  
 17 Q: Would you document those  
 18 interactions?  
 19 MR. SULLIVAN: Objection to form.  
 20 THE WITNESS: Yes, you would -- you  
 21 would document those interactions.  
 22 BY MR. THOMAS:  
 23 Q: Is there ever a time when, if an  
 24 employee raised the sorts of questions I  
 25 just -- well, let me -- let me go back through

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1 D. Berardo  
 2 that.  
 3 Is there ever a time that an  
 4 employee said something to you like 'all I ask  
 5 for is to be treated the same --' if a female  
 6 employee -- strike that.  
 7 If a female employee said something  
 8 like 'all I ask is to be treated the same'  
 9 when comparing herself to male counterparts,  
 10 is there ever a situation where you wouldn't  
 11 follow up and ask questions of her about that?  
 12 MR. SULLIVAN: Objection to form.  
 13 THE WITNESS: So if -- I mean --  
 14 MR. THOMAS: What is -- what is the  
 15 basis of the objection?  
 16 MR. SULLIVAN: It's calling for a  
 17 hypothetical.  
 18 MR. THOMAS: No, I'm -- okay. Then  
 19 let me make it clear.  
 20 BY MR. THOMAS:  
 21 Q: Under Absolute's policy and  
 22 practices, as HR manager, would there ever be  
 23 a time that you wouldn't follow up and ask a  
 24 woman further questions when she says 'all I  
 25 ask is to be treated the same' and comparing

1 D. Berardo  
2 herself to male colleagues?  
3 A: So, again, I can't speak to the  
4 policy specifically, because I don't have it  
5 in front of me right now. I don't recall  
6 specifically what it said. But I will say  
7 that if someone was in my office at Absolute  
8 and she said what you just said, I would  
9 always -- I would always ask a follow-up  
10 question to her and -- and get more  
11 information.  
12 Q: Same for a female employee who says  
13 that she just wants to be paid fairly?  
14 A: I would ask her -- I would ask her  
15 more information.  
16 Q: Always?  
17 MR. SULLIVAN: Objection to form.  
18 THE WITNESS: Yeah, I would never  
19 shoo that person out of my office. I would  
20 always ask some more questions.  
21 BY MR. THOMAS:  
22 Q: Would you always ask under -- as --  
23 as 'H' -- as the head of HR, if a woman said  
24 that she wants to be paid full value for her  
25 work and says that male employees are being

1 D. Berardo  
2 paid full value but she isn't, would you  
3 always ask follow-up questions for that?  
4 MR. SULLIVAN: Objection to form.  
5 THE WITNESS: Yeah, I would ask  
6 follow-up questions.  
7 MR. THOMAS: What is -- so what is  
8 the basis of the objection, Mark?  
9 MR. SULLIVAN: Hypothetical.  
10 BY MR. THOMAS:  
11 Q: I'm talking about -- well, let me --  
12 I'm not asking hypothetical. I'm talking  
13 about under your practices at -- as head of  
14 HR, would you always follow up with a woman  
15 who said -- that came to you and said 'I want  
16 to be paid full value for my work' and  
17 compared herself to a male employee who she  
18 said was being paid full value?  
19 MR. SULLIVAN: Objection to form.  
20 THE WITNESS: Yes, I would have.  
21 MR. THOMAS: What is the objection,  
22 Mark?  
23 MR. SULLIVAN: Vague, ambiguous.  
24 MR. THOMAS: What is vague and  
25 ambiguous about it?

1 D. Berardo  
2 MR. SULLIVAN: The circumstances  
3 surrounding your -- what is, essentially, a  
4 hypothetical. I don't follow them. I  
5 think it's -- I think they're vague and  
6 ambiguous. I'm not directing --  
7 MR. THOMAS: Okay.  
8 BY MR. THOMAS:  
9 Q: Go ahead, Mr. Berardo.  
10 MR. SULLIVAN: -- him not to answer,  
11 but I -- I have asserted objection based on  
12 form.  
13 BY MR. THOMAS:  
14 Q: Go ahead, Mr. Berardo. You would  
15 always ask -- correct? -- under those  
16 circumstances?  
17 A: Yes, I would always ask follow-up  
18 questions.  
19 Q: If a female employee said she didn't  
20 want to be known as a troublemaker when she  
21 was complaining about her treatment by her  
22 male manager, would you always ask follow-up  
23 questions for that?  
24 A: Yes, I --  
25 MR. SULLIVAN: Objection to form.

1 D. Berardo  
2 THE WITNESS: Yes, I would ask  
3 follow-up questions.  
4 BY MR. THOMAS:  
5 Q: And you would always ask follow-up  
6 questions if a female employee told you that  
7 she was being treated differently than her  
8 male counterparts; correct?  
9 MR. SULLIVAN: Objection to form.  
10 THE WITNESS: I would ask follow-up  
11 questions, yes.  
12 BY MR. THOMAS:  
13 Q: And let me just ask you -- I have  
14 more to go here. Are you -- in terms of a  
15 lunch -- I -- I mean, I'm in a different time  
16 zone than you. So I'm -- I don't need a lunch  
17 break, but I don't know what you all are  
18 thinking. Do you want a -- do you need a  
19 lunch break? Do you want to take some time  
20 now? Or what is your thought?  
21 MR. SULLIVAN: How are you doing?  
22 THE WITNESS: I'm -- I'm good, if you  
23 are.  
24 MR. SULLIVAN: Yeah, we -- we can  
25 continue going. What -- I -- is --

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1 D. Berardo  
2 MS. LESTRADE: Yeah.  
3 MR. SULLIVAN: -- everyone else good  
4 with that?  
5 MS. LESTRADE: Sure. We've got our  
6 lunches here.  
7 MR. SULLIVAN: Yeah.  
8 MR. THOMAS: Okay. Fine.  
9 MR. SULLIVAN: Let's ask the court  
10 reporter. You will need a lunch break.  
11 What -- can you go another half hour, or do  
12 you want to stop now?  
13 THE COURT REPORTER: Yeah,  
14 absolutely. Another half hour is fine.  
15 MR. SULLIVAN: All right. Why don't  
16 we go another half hour and see where we  
17 are then?  
18 MR. THOMAS: Okay.  
19 BY MR. THOMAS:  
20 Q: Mr. Berardo, let me also say that,  
21 about today's deposition, if at any point you  
22 need a break, of course just let us know.  
23 We'll be glad to accommodate it. If I've got  
24 a question pending, I may just want to finish  
25 off the question and answer before, but we can

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1 D. Berardo  
2 take a break.  
3 A: Sure. Thank you.  
4 MR. SULLIVAN: Do you need a break  
5 now, or are you --  
6 THE WITNESS: I'm good right now.  
7 BY MR. THOMAS:  
8 Q: And -- sorry, go ahead. And then  
9 also, too, if you're -- and I think we have  
10 been doing this so far, but if you have any  
11 problems understanding the question I'm asking  
12 you, will you be sure to let me know before  
13 you answer it?  
14 A: Yes. Yeah.  
15 Q: And -- and you -- also, too, if I ask  
16 you a question and it can be answered several  
17 different ways and you're not sure which way  
18 to answer it, just let me know that too before  
19 you answer, if that's okay.  
20 A: Sure, yeah.  
21 Q: Were you aware about Errol Olsen  
22 engaging in a nude swim when he was -- when he  
23 was at -- working at Absolute?  
24 MR. SULLIVAN: Objection to form.  
25 THE WITNESS: So I -- I came on after

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1 D. Berardo  
2 that incident, but -- but I -- I was made  
3 -- made aware of that incident.  
4 BY MR. THOMAS:  
5 Q: Who made you aware of it?  
6 A: I don't -- I don't recall  
7 specifically. I don't recall specifically who  
8 made me aware.  
9 Q: Was it told to you through official  
10 channels, or was it sort of just gossip?  
11 A: It was -- it was -- it was most  
12 likely gossip.  
13 Q: And what did you hear about what he  
14 had done?  
15 A: So from -- from what I recall, it  
16 was -- it was -- there was the CEO, the CFO,  
17 and the COO, and they went skinny-dipping in a  
18 pool.  
19 Q: Is that the most significant part of  
20 it?  
21 A: From -- from what I recall.  
22 Q: It was not that significant that it  
23 was in front of a whole bunch of employees?  
24 A: No, so, sorry, it was -- so from --  
25 from -- from what I recall, from what was told

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1 D. Berardo  
2 to me, it was in front of -- I'm not sure if  
3 it was a whole bunch of employees. It was in  
4 front of at least --  
5 Q: Well, it was at least -- at least in  
6 front of a number of employees; correct?  
7 A: I -- I would say at least in front of  
8 one employee. There may have been more.  
9 Q: So who -- who was that employee?  
10 A: I don't know. I -- I wasn't there,  
11 and so I don't have specifics.  
12 Q: Was it done at a company event?  
13 A: I don't know.  
14 Q: At the pool that the company -- or  
15 the hotel the company was staying at?  
16 A: I don't know.  
17 Q: And Mr. Olsen was your -- was the  
18 one -- the head of HR? I mean, or who -- that  
19 -- into who HR reported?  
20 MR. SULLIVAN: Objection to form.  
21 THE WITNESS: When I -- when I -- he  
22 was -- he was the -- he -- I reported in to  
23 him when I became the HR manager. Previous to that, Leah had  
24 reported in to the CEO.  
25 BY MR. THOMAS:

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1 D. Berardo  
2 Q: Okay. So when you came onboard, they  
3 shifted over your forwarding relationship to  
4 the guy who had swum naked in front of at  
5 least one employee, if not more, at a company  
6 event previously; correct?  
7 MR. SULLIVAN: Objection to form.  
8 THE WITNESS: I -- I started  
9 reporting to Errol when I became the HR  
10 manager, correct.  
11 BY MR. THOMAS:  
12 Q: Did you think it was weird at all  
13 that you were reporting to a person who --  
14 well, first of all, what -- what do you think  
15 of the CFO swimming naked in front of  
16 employees at a company event --  
17 MR. SULLIVAN: Objection --  
18 BY MR. THOMAS:  
19 Q: -- from an HR perspective?  
20 MR. SULLIVAN: Objection to form.  
21 THE WITNESS: So you're asking for my  
22 personal opinion?  
23 BY MR. THOMAS:  
24 Q: No, your opinion as an HR -- I mean,  
25 as -- with your background in HR --

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1 D. Berardo  
2 A: Sure.  
3 Q: -- and working at Absolute.  
4 MR. SULLIVAN: Objection to form.  
5 THE WITNESS: Sure. Obviously, it's  
6 inappropriate. Absolutely inappropriate.  
7 BY MR. THOMAS:  
8 Q: And was there any discipline taken in  
9 terms of Mr. Olsen?  
10 A: I wasn't --  
11 MR. SULLIVAN: Objection to form.  
12 THE WITNESS: I wasn't at the company  
13 at that time. I -- I don't know.  
14 BY MR. THOMAS:  
15 Q: Did it concern you at all that you  
16 were suddenly reporting in HR -- in to someone  
17 who had engaged in absolutely inappropriate  
18 behaviour?  
19 MR. SULLIVAN: Objection to form.  
20 THE WITNESS: I don't recall -- I  
21 don't recall how I felt about it.  
22 BY MR. THOMAS:  
23 Q: How do you feel about it now?  
24 MR. SULLIVAN: Objection to form.  
25 THE WITNESS: How do I feel about it

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1 D. Berardo  
2 now? You know -- so, again, if you're  
3 asking for my personal opinion, I don't  
4 know the --  
5 BY MR. THOMAS:  
6 Q: No, your -- your opinion as -- with  
7 your background in HR.  
8 MR. SULLIVAN: Objection to form.  
9 BY MR. THOMAS:  
10 Q: Should HR be reporting in to the guy  
11 who engaged in absolutely inappropriate  
12 behaviour with other employees of a sexual  
13 nature?  
14 MR. SULLIVAN: Objection to form.  
15 THE WITNESS: Well, there was --  
16 there was no other -- there was no other  
17 choice at that point on where to report in  
18 to, so under the circumstances --  
19 BY MR. THOMAS:  
20 Q: So it was fine?  
21 MR. SULLIVAN: Objection to form.  
22 THE WITNESS: Under the  
23 circumstances, that's who I reported in to.  
24 BY MR. THOMAS:  
25 Q: You could have reported in to the

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1 D. Berardo  
2 CEO.  
3 MR. SULLIVAN: Objection to form.  
4 BY MR. THOMAS:  
5 Q: As was done before; right?  
6 A: The CEO was part of that incident.  
7 Q: Oh, okay. So, yeah, I guess we have  
8 the CEO engaged in absolutely inappropriate  
9 behaviour; right?  
10 MR. SULLIVAN: Objection to form.  
11 THE WITNESS: Those were -- that's --  
12 that was the gossip that I heard. Again, I  
13 wasn't at the company at that time.  
14 BY MR. THOMAS:  
15 Q: But assuming it to be true, that they  
16 were swimming naked in front of at least one  
17 employee at a company event -- the CEO did  
18 that; is that correct?  
19 MR. SULLIVAN: Objection to form.  
20 THE WITNESS: Again, this was -- it's  
21 gossip. So I wasn't there. I -- I don't  
22 know for certain.  
23 BY MR. THOMAS:  
24 Q: Who was it, to your understanding,  
25 that engaged in a nude swim in front of



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1 D. Berardo  
2 employees?  
3 MR. SULLIVAN: Objection to form.  
4 THE WITNESS: I mean, the gossip that  
5 I heard was the -- were -- was the -- were the CEO, the CFO, and  
6 the COO.  
7 BY MR. THOMAS:  
8 Q: From an HR perspective, what -- what  
9 does that make you feel about Absolute as the  
10 company?  
11 MR. SULLIVAN: Objection.  
12 BY MR. THOMAS:  
13 Q: That the CEO, CFO, and COO are  
14 swimming naked in front of employees at a  
15 company event?  
16 MR. SULLIVAN: Objection to form.  
17 THE WITNESS: As I mentioned before,  
18 it -- I -- I would feel that that's  
19 completely inappropriate.  
20 BY MR. THOMAS:  
21 Q: And what did you feel about working  
22 in the HR role for a company that had the top  
23 level management engaging in that behaviour?  
24 MR. SULLIVAN: Objection to form.  
25 THE WITNESS: Well, so me and my

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1 D. Berardo  
2 previous manager felt that we could add  
3 some professional capabilities and  
4 professional HR support to the company, so  
5 we -- we felt that we could make a positive  
6 impact.  
7 BY MR. THOMAS:  
8 Q: And so when you say there really  
9 wasn't anyone -- there wasn't really any other  
10 choice, the reason there wasn't any other  
11 choice was because the entire top management  
12 of the company, you understood, had engaged in  
13 absolutely inappropriate behaviour, so you're  
14 going to be stuck with one of them. Right?  
15 MR. SULLIVAN: Objection to form.  
16 THE WITNESS: So, I mean, from the  
17 gossip that I heard -- again, I wasn't  
18 there -- I mean, that was my opinion. I  
19 mean...  
20 BY MR. THOMAS:  
21 Q: What does that symbolize to you about  
22 the culture of Absolute?  
23 MR. SULLIVAN: Objection to form.  
24 THE WITNESS: The culture of Absolute  
25 when?

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1 D. Berardo  
2 BY MR. THOMAS:  
3 Q: When you started working at Absolute.  
4 What did that symbolize for you about the  
5 culture at Absolute?  
6 MR. SULLIVAN: Objection to form.  
7 THE WITNESS: Well, I think the  
8 culture at Absolute, when I started,  
9 definitely needed some -- it definitely  
10 needed some work. And -- and -- and that's  
11 why, you know, when our -- our founder CEO  
12 resigned and we went on a search for a new  
13 CEO, brought in some new sales  
14 professionals, that's why I felt it was a  
15 positive -- those were -- those were  
16 positive developments.  
17 BY MR. THOMAS:  
18 Q: Why did -- why did the culture need  
19 changing, from your HR perspective?  
20 MR. SULLIVAN: Objection to form.  
21 THE WITNESS: Typically, with founder  
22 CEOs, you know, they -- they -- they hold  
23 the company near and dear. They don't like  
24 a lot of change. So I felt for the company  
25 to take it to the next level, that it

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1 D. Berardo  
2 needed some outside help.  
3 BY MR. THOMAS:  
4 Q: Because...?  
5 A: I mean, from a business perspective,  
6 understanding the importance of HR. That's  
7 just from my perspective. From a sales  
8 perspective, from a product's perspective, I  
9 think an outside person can provide a lot of  
10 value.  
11 Q: And one of the -- one of the bad  
12 things about the culture at Absolute was the  
13 top three people in the company would swim  
14 naked at a company event in front of other  
15 employees. That was the culture; correct?  
16 MR. SULLIVAN: Objection to form.  
17 THE WITNESS: I wouldn't define  
18 the --  
19 BY MR. THOMAS:  
20 Q: That needed help?  
21 A: No, I -- I -- I wouldn't define the  
22 culture as -- from that specific incident.  
23 Q: Isn't that typical of the way that --  
24 it was -- it was acceptable for that to happen  
25 at Absolute; right?

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1 D. Berardo  
2 MR. SULLIVAN: Objection to form.  
3 THE WITNESS: I wasn't there at the  
4 time, so I can't say if it was acceptable  
5 or not acceptable.  
6 BY MR. THOMAS:  
7 Q: Well, let's talk about Errol Olsen  
8 who was one of the three people. Where is he  
9 today?  
10 A: My understanding is that he's still  
11 at Absolute.  
12 Q: M'mm-hmm. What -- what position had  
13 he held when you were looking for a new CEO?  
14 A: He was interim CEO.  
15 Q: M'mm-hmm. Was that a good -- a good  
16 way to have the -- the culture of the company,  
17 from your HR perspective?  
18 MR. SULLIVAN: Objection to form.  
19 THE WITNESS: I mean, from my  
20 perspective, Errol -- Errol was a very --  
21 he was a highly engaged leader that really  
22 cared about people. That was my --  
23 BY MR. THOMAS:  
24 Q: Are you referring to the nude swim as  
25 being highly engaged and very caring about

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1 D. Berardo  
2 people?  
3 MR. SULLIVAN: Objection to form.  
4 BY MR. THOMAS:  
5 Q: Doing -- doing that in front of other  
6 employees, that's very caring?  
7 A: No, that's -- that's not what I  
8 was --  
9 Q: It's --  
10 A: -- referring to.  
11 Q: -- certainly very engaged. I would  
12 agree with you there.  
13 MR. SULLIVAN: Objection to form.  
14 THE WITNESS: That's not what I was  
15 referring to.  
16 BY MR. THOMAS:  
17 Q: Okay. Well, would that be an example  
18 of him being highly engaged, jumping in a pool  
19 naked in front of other employees?  
20 MR. SULLIVAN: Objection to form.  
21 THE WITNESS: That would not be an  
22 example of that, no.  
23 BY MR. THOMAS:  
24 Q: Okay. Would that be an example of  
25 him -- well, why -- well, why don't you -- I

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1 D. Berardo  
2 mean, here is a guy who engaged in that  
3 behaviour and managed to stay as CFO of the  
4 company -- to come in from CEO and stay as  
5 CFO. How -- how were -- did you -- how were  
6 you able to change that culture?  
7 MR. SULLIVAN: Objection to form.  
8 BY MR. THOMAS:  
9 Q: Where someone -- where someone can  
10 engage in absolutely inappropriate behaviour  
11 and have that sort of career in the company?  
12 MR. SULLIVAN: Objection to form.  
13 THE WITNESS: So I think that's --  
14 that's more of a question for the board of  
15 directors. From -- from my -- all my  
16 interactions with Errol, he was always  
17 respectful in his communication to me, to  
18 employees. So, I mean -- and -- and he was  
19 very supportive of us creating a very  
20 engaged workforce.  
21 BY MR. THOMAS:  
22 Q: And he was the one chosen to have HR  
23 report in to him as well; correct?  
24 MR. SULLIVAN: Objection to form.  
25 THE WITNESS: Yes. I reported in to

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1 D. Berardo  
2 him when I became the HR manager.  
3 BY MR. THOMAS:  
4 Q: When did you become aware of Thomas  
5 Kenny's comments about Absolute's hiring  
6 criteria during the New York -- Westin  
7 New York City meeting in April 2015?  
8 MR. SULLIVAN: Objection to form.  
9 THE WITNESS: I became aware of it  
10 once Mary was terminated and we were in  
11 discussions with her lawyer, and the lawyer  
12 brought up the comment to us.  
13 BY MR. THOMAS:  
14 Q: Was it a failure on the part of HR  
15 that you didn't become aware of that until  
16 someone threatened to file a lawsuit?  
17 MR. SULLIVAN: Objection to form.  
18 THE WITNESS: I -- I would --  
19 BY MR. THOMAS:  
20 Q: Months later?  
21 A: No. I don't know how we would have  
22 had this information unless the employee came  
23 forward with the information.  
24 Q: How many people were in the meeting?  
25 A: I don't recall specifically. I

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1 D. Berardo  
2 wasn't at the meeting.  
3 MR. THOMAS: Okay. All right. If  
4 the court reporter can get Exhibit 38 for  
5 the witness, Kenny 38. We can go on or off  
6 the record. It does not matter to me.  
7 THE COURT REPORTER: It's fine.  
8 BY MR. THOMAS:  
9 Q: All right. Once you have the  
10 document, I would like you to return -- I  
11 would like you to turn to response to  
12 interrogatory 15, which is on page 17.  
13 A: Number 15, sorry?  
14 Q: Yeah. Actually, I mean, before we  
15 even go to that, I mean, would you -- would  
16 you have expected in HR that you should have  
17 been informed of the comments that Thomas  
18 Kenny made?  
19 MR. SULLIVAN: Objection to form.  
20 THE WITNESS: If someone had taken  
21 offence to them, I would -- I would have  
22 appreciated someone coming to talk to me  
23 about it.  
24 BY MR. THOMAS:  
25 Q: What about even if someone hadn't

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1 D. Berardo  
2 taken offence to them, just the fact that they  
3 were being put out there as the hiring  
4 criteria for Absolute. Is it something you  
5 would have liked to have been told about?  
6 MR. SULLIVAN: Objection to form.  
7 THE WITNESS: I don't think that it  
8 was -- I mean, my opinion is that it was  
9 not being put out as a hiring criteria.  
10 BY MR. THOMAS:  
11 Q: Or, I mean, was it -- were there --  
12 well, did -- well, let me ask you this: Did  
13 you understand that Mr. Kenny said that  
14 this -- that he was referring to the type of  
15 people that Geoff Haydon wanted to have hired  
16 in the company?  
17 MR. SULLIVAN: Objection to form.  
18 THE WITNESS: Is there -- sorry, can  
19 I -- can I look at the quote again?  
20 Because -- is there --  
21 BY MR. THOMAS:  
22 Q: All right. We'll -- yeah, we'll --  
23 we can go there. Hang on here.  
24 A: Sure.  
25 MR. THOMAS: If the court reporter

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1 D. Berardo  
2 could get Exhibits 36 and 37, Kenny 36 and  
3 Kenny 37 for the witness.  
4 BY MR. THOMAS:  
5 Q: What I would ask you --  
6 A: This is 38.  
7 Q: -- to do, Mr. Berardo, is read over  
8 Exhibit 36 and 37, and then I'm going to ask  
9 you some questions about them.  
10 A: Sure.  
11 This is 37.  
12 THE COURT REPORTER: Yeah, and then  
13 what is the next one?  
14 THE WITNESS: This is 38.  
15 BY MR. THOMAS:  
16 Q: And I believe if we go in  
17 chronological order -- you can take a look --  
18 but I think Exhibit 37 -- oh, I'm sorry.  
19 Wait, no. Actually, this is -- yeah, 36 takes  
20 place chronologically before Exhibit 37,  
21 but --  
22 MR. SULLIVAN: Nelson, the court  
23 reporter has not yet located Exhibit 36.  
24 MR. THOMAS: Okay. All right.  
25 Thank you.

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1 D. Berardo  
2 THE COURT REPORTER: Can we actually  
3 go off the record?  
4 VIDEOGRAPHER: Going off record. The  
5 time is 1:45.  
6 (PROCEEDINGS RECESSED AT 1:45 P.M.)  
7 (PROCEEDINGS RECONVENED AT 2:44 P.M.)  
8 VIDEOGRAPHER: We're back on the  
9 record. The time is 2:44.  
10 BY MR. THOMAS:  
11 Q: All right. Hey. Thank you very  
12 much.  
13 Mr. Berardo, we'll go over those  
14 exhibits in just a second.  
15 A: Sure.  
16 Q: Before I do that, one follow-up  
17 question I had for you was you -- when we were  
18 talking about the nude swim that the COO, CEO,  
19 and CFO participated in, you said you think  
20 there was one other -- one other employee  
21 present -- or at least one other employee that  
22 you thought might be present. Who was that?  
23 MR. THOMAS: Objection to form.  
24 THE WITNESS: So, sorry, I -- I don't  
25 know. I -- I wasn't there. I didn't read

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1 D. Berardo  
2 any reports. Just pure gossip and  
3 speculation.  
4 BY MR. THOMAS:  
5 Q: Yeah, sure.  
6 A: So I don't know.  
7 Q: I will take your gossip and  
8 speculation.  
9 A: Oh, I don't -- I don't -- wouldn't  
10 know who that employee was. I was just  
11 speculating that there would be at least one  
12 employee there, if there was -- you know, it  
13 turned out to be an issue.  
14 Q: Were you aware that an employee  
15 posted a Facebook page about it?  
16 A: I was not, no.  
17 Q: Okay. All right. So have you had a  
18 chance to look at Exhibits 36 and 37?  
19 A: I have not, no.  
20 Q: Okay. Why don't you go ahead and  
21 take a look.  
22 A: Sure. Okay.  
23 Q: So I guess the first question I have  
24 for you is, turning to Exhibit 36, page  
25 DEF9807, did you understand that the comment

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1 D. Berardo  
2 at issue was 'the CEO does not want to hire  
3 people who are at the end of their rainbow; he  
4 just wants to hire guys who are athletes, talk  
5 trash, and are aggressive?'  
6 A: Yeah, I believe that, just from my  
7 recollection, that was the quote that you --  
8 that you had provided to us that -- that  
9 Thomas allegedly said.  
10 Q: Do you consider that to be referring  
11 to hiring criteria?  
12 A: Absolutely not.  
13 Q: When it says 'the CEO does not want  
14 to hire,' you don't think that's hiring  
15 criteria?  
16 A: I -- I -- recruiting and hiring to me  
17 meant at no time did -- did -- did this ever  
18 get sent to us to hire, you know...  
19 Q: I'm not asking that. I'm asking you,  
20 though, the statement 'the CEO does not want  
21 to hire blank, blank, blank,' that is a  
22 reference, whether true or not, to hiring  
23 criteria; correct?  
24 MR. SULLIVAN: Objection to form.  
25 THE WITNESS: So you're asking for my

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1 D. Berardo  
2 opinion?  
3 BY MR. THOMAS:  
4 Q: No, I'm asking for -- all my  
5 questions today will be you with your HR  
6 background.  
7 A: So if someone -- yeah, so if -- if  
8 someone said to me 'the CEO does not want to  
9 hire,' that would refer to hiring some -- you  
10 know, what he does -- who he does and doesn't  
11 want to hire, sure.  
12 Q: Okay. Now, I think you're also  
13 saying that what was said was -- was not --  
14 did not accurately reflect the company's  
15 hiring criteria; right?  
16 A: This -- this does not reflect the  
17 company's hiring criteria, no.  
18 Q: Would you have expected employees to  
19 tell you about statements like this that were  
20 made at company events?  
21 MR. SULLIVAN: Objection to form.  
22 THE WITNESS: Yeah, I mean, if  
23 they -- if they -- if they took offence to  
24 it or --  
25 BY MR. THOMAS:

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1 D. Berardo  
2 Q: Even if -- even if they didn't take  
3 offence.  
4 MR. SULLIVAN: Objection to form.  
5 THE WITNESS: 'The CEO does not want  
6 to hire people who are at the end of their  
7 rainbow. He just wants to hire guys who  
8 are athletes, talk trash, and are  
9 aggressive.' I mean, as the head of HR, I  
10 would have liked if someone would have, you  
11 know, brought this to my attention, if --  
12 if -- if it was said.  
13 BY MR. THOMAS:  
14 Q: And no one brought it your  
15 attention -- correct? -- until this lawsuit?  
16 A: That's correct.  
17 Q: Now, is it true that Thomas Kenny did  
18 not deny that he made these statements?  
19 MR. SULLIVAN: Objection to form.  
20 THE WITNESS: So just referring back  
21 to the email, so I said Thomas does not --  
22 does not deny that he said these comments,  
23 but he said that they were taken out of  
24 context. So -- so that's -- you know,  
25 that's a fact that is in the -- that is in

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1 D. Berardo  
2 the exhibit.  
3 BY MR. THOMAS:  
4 Q: And that's a fact that you recorded;  
5 right?  
6 A: That's correct.  
7 Q: And that you accurately recorded?  
8 A: I -- I would presume I accurately --  
9 I accurately recorded this, yes.  
10 Q: Did Thomas ever deny to you that he  
11 made these comments?  
12 MR. SULLIVAN: Objection to form.  
13 THE WITNESS: From what I recall,  
14 he -- I mean, when I had the conversation  
15 with him, I don't think he ever admitted  
16 that he said -- he said the -- you know, he  
17 said it exactly as quoted. You know, so I  
18 don't -- I don't recall if --  
19 BY MR. THOMAS:  
20 Q: What did he -- what did he say he  
21 said?  
22 A: I don't -- I don't recall -- what I  
23 recall is kind of in the email and how he --  
24 how he would have explained that, if he had  
25 said -- if he had said 'end of the rainbow,'

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1 D. Berardo  
2 what he was referring to -- you know, says he  
3 was referring to those that are 'coasting in  
4 their careers and just collecting a  
5 paycheck.'  
6 Q: Was that him denying the comment was  
7 made?  
8 A: I don't think that was him denying  
9 the comment was made, no.  
10 Q: Did he ever deny to you that the  
11 comment was made?  
12 MR. SULLIVAN: Objection to form.  
13 THE WITNESS: I don't -- I don't -- I  
14 don't recall him ever admitting that the --  
15 that the comment was made exactly how it  
16 was laid out.  
17 BY MR. THOMAS:  
18 Q: My question to you is did he ever  
19 deny making the comment?  
20 A: I -- I don't remember. I don't  
21 recall if he ever denied it or not.  
22 Q: And, in fact, if you turn to  
23 Exhibit 37, you asked him three main  
24 questions. 'Where does this statement come  
25 from?'

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1 D. Berardo  
2 A: Right.  
3 Q: And he said to you he was referring  
4 to the environment where Geoff came from, not  
5 a specific quote from Geoff.  
6 A: Okay.  
7 Q: Right? Is that what he told you?  
8 A: I would presume so, if it's -- if  
9 it's on here. I would have recorded this  
10 accurately.  
11 Q: And you also would have recorded  
12 accurately his statement to you Geoff never  
13 said the statement to TK?  
14 A: If that's what he said and I wrote  
15 down, that would be accurate.  
16 Q: Well, I'm asking you -- well, let's  
17 go -- let's -- let's go through -- let's start  
18 with Exhibit 36.  
19 A: Sure.  
20 Q: Anything that you have written in 36  
21 that is not accurate?  
22 A: Again, I -- I can only presume five  
23 years ago or four years ago, whenever I wrote  
24 this down, that I would -- I would only have  
25 written down accurate -- accurate things. So

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1 D. Berardo  
2 everything in here --  
3 Q: I'm asking you -- so -- so is there  
4 any -- do you have any reason to believe that  
5 any statement of yours in Exhibit Kenny 36 is  
6 inaccurate?  
7 A: No, I have no reason to believe that.  
8 Q: Turning to Exhibit 37, do you have  
9 any reason to believe that any statement that  
10 you wrote in Exhibit 37 is inaccurate?  
11 A: No.  
12 Q: Do you remember anything in  
13 Exhibit 36 from those conversations that you  
14 relate that you left out?  
15 A: Not that I recall.  
16 Q: Any --  
17 A: I --  
18 Q: -- statements that related to the  
19 conversations you had in Exhibit 37 that you  
20 left out?  
21 A: No. I mean, I -- I can't recall the  
22 actual conversation in my mind.  
23 Q: So is there anything you can remember  
24 leaving out in Exhibit 37?  
25 A: No. I don't recall the conversation,

1 D. Berardo  
2 so --- I -- I don't recall the conversation.  
3 So, therefore, you know, it's hard for me to  
4 answer that question, if I left anything out,  
5 because I don't recall the conversation.  
6 Q: In Exhibit 38 and 37, you were  
7 sending the information to your in-house  
8 lawyer, Oliver de Geest, and your outside  
9 lawyer, Aaron Goldstein. Correct?  
10 A: Yes.  
11 Q: Would you have had every incentive to  
12 be accurate and complete in what you wrote up  
13 to them?  
14 MR. SULLIVAN: Objection to form.  
15 THE WITNESS: Well, I would -- I  
16 would have only told them -- I would have  
17 only told them the truth. Absolutely.  
18 BY MR. THOMAS:  
19 Q: And would there be any reason that  
20 you would have left out any important  
21 information to them from these conversations?  
22 MR. SULLIVAN: Objection to form.  
23 THE WITNESS: Not -- not that I  
24 recall. I don't recall the conversation,  
25 so it's hard -- it's hard --

1 D. Berardo  
2 BY MR. THOMAS:  
3 Q: My question is -- my question to you  
4 is different. My question to you is is there  
5 any reason you would have not been complete in  
6 describing the conversation that you occur --  
7 that occurred with Mr. Kenny --  
8 MR. SULLIVAN: Objection to form.  
9 BY MR. THOMAS:  
10 Q: -- on any important point?  
11 A: Nothing that I can think of.  
12 Q: Now, on page 36, you said that you  
13 spoke to seven people from the meeting. Do  
14 you see that?  
15 A: Oh, Exhibit 36?  
16 Q: Yeah.  
17 A: Yeah, I do.  
18 Q: Who were those seven people?  
19 A: I don't -- I don't recall their  
20 names.  
21 Q: Two women who were present recalled  
22 the statement. Do you see that?  
23 A: I do see that, yes.  
24 Q: And brushed it off. They 'know how  
25 TK is.' Do you see that?

1 D. Berardo  
2 A: I do see that, yes.  
3 Q: And they did interpret it in a  
4 negative way; is that correct?  
5 A: Yes, I do see that.  
6 Q: Did it concern you, as head of HR,  
7 that the two women you interviewed viewed the  
8 comment in a negative way?  
9 MR. SULLIVAN: Objection to form.  
10 THE WITNESS: So, I mean, I can't  
11 remember how I -- I felt when I spoke with  
12 them. I will say, as the head of HR, yeah,  
13 it would concern me.  
14 BY MR. THOMAS:  
15 Q: And did it concern you that they  
16 thought that they -- they 'know how TK is' --  
17 MR. SULLIVAN: Objection to form.  
18 BY MR. THOMAS:  
19 Q: -- in terms of him making comments  
20 like that?  
21 A: I can't say that was in reference to  
22 him making comments like that. I'm not sure  
23 what that -- what that was reference -- what  
24 -- what that exactly was referencing.  
25 Q: And, now, you said you would have

1 D. Berardo  
2 expected someone at Absolute who was bothered  
3 by the comment to -- that you would have  
4 expected to have heard about it; correct?  
5 MR. SULLIVAN: Objection to form.  
6 BY MR. THOMAS:  
7 Q: At the time.  
8 A: I would have -- I would have expected  
9 it -- I would have -- I mean, I would -- I  
10 would have liked someone to raise it, if -- if  
11 they felt offended by it, yes.  
12 Q: And these people did interpret it in  
13 a negative way, didn't they?  
14 MR. SULLIVAN: Objection to form.  
15 THE WITNESS: Yeah. From that  
16 statement, yes.  
17 BY MR. THOMAS:  
18 Q: And they didn't feel comfortable  
19 raising it with you, did they?  
20 MR. SULLIVAN: Objection to form.  
21 THE WITNESS: So I -- I can't  
22 interpret how they felt.  
23 BY MR. THOMAS:  
24 Q: No, my question to you is they did  
25 not -- well, I -- they never raised it --

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1 D. Berardo  
2 strike that.  
3 They never raised it with you, did  
4 they?  
5 A: They did not raise it, correct.  
6 Q: Let's go back to Exhibit 67.  
7 A: 67?  
8 Q: And if you would go to page  
9 DEFS1411 -- and, actually, no, I'm sorry.  
10 Well, let's look at that. On DEFS -- I'm  
11 sorry. Yeah, let's look at DEFS1411, the  
12 middle of that second bullet where it talks  
13 about the lack of female representation,  
14 diversity of the company, the fact that women  
15 are paid less and can't advance their careers.  
16 And then go to the comment on page  
17 DEFS1395 where the respondent said:  
18 The current leadership of Todd Awtry  
19 and Thomas Kenny is not receptive to any  
20 kind of feedback.'  
21 And DEFS1397, the second bullet below  
22 'comments,' which says:  
23 Staff are afraid to truly speak about  
24 management. Not encouraged. If you speak  
25 up, you will lose your job.'

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1 D. Berardo  
2 So compare those comments from the survey back  
3 in 2014 with the culture in 2015 that felt  
4 uncomfortable when comments are made about  
5 hiring criteria and raising them with HR. How  
6 much had changed?  
7 MR. SULLIVAN: Objection to form.  
8 THE WITNESS: Well, I mean, you're --  
9 you're picking one comment out of, you  
10 know...  
11 BY MR. THOMAS:  
12 Q: I picked three.  
13 A: Well, three comments. It could be  
14 the same person out of 300-plus people. So I  
15 don't think that one comment would --  
16 Q: So three comments.  
17 A: Sure -- those three comments is  
18 representative of the culture of -- of  
19 Absolute or the culture of speaking up.  
20 Q: Well, it's representative in 2015  
21 that two women who thought these comments were  
22 negative towards them and typical of Thomas  
23 Kenny didn't feel comfortable mentioning that  
24 to you. Correct? You had to find out through  
25 a lawsuit?

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1 D. Berardo  
2 MR. SULLIVAN: Objection to form.  
3 THE WITNESS: So, you know, what I  
4 would say is that I don't know how they  
5 felt or why they didn't bring it up, but I  
6 think it would be speculation to say that  
7 they didn't bring it up because they felt  
8 uncomfortable.  
9 BY MR. THOMAS:  
10 Q: Do you know any other reason why they  
11 wouldn't bring it up to HR?  
12 MR. SULLIVAN: Objection to form.  
13 THE WITNESS: It could be because  
14 they just brushed it off as -- as no big  
15 deal.  
16 BY MR. THOMAS:  
17 Q: Typical Thomas Kenny, the way he is?  
18 MR. SULLIVAN: Objection to form.  
19 THE WITNESS: I don't know. I would  
20 -- I would be speculating. It would be  
21 best to speak to these witnesses.  
22 BY MR. THOMAS:  
23 Q: I don't think -- I don't think you  
24 would be speculating about that, because they  
25 told you they knew that's how -- they brushed

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1 D. Berardo  
2 it off because they knew that's how Thomas  
3 Kenny was.  
4 A: But --  
5 MR. SULLIVAN: Objection to form. Is  
6 that a question?  
7 MR. THOMAS: Yeah.  
8 BY MR. THOMAS:  
9 Q: I don't think you're speculating, are  
10 you? Because that's what they told you?  
11 A: As I --  
12 MR. SULLIVAN: Objection to form.  
13 THE WITNESS: As I mentioned before,  
14 they 'know how TK is,' I -- I don't have  
15 any context or remember any context on why  
16 they said that or what they meant by that.  
17 BY MR. THOMAS:  
18 Q: Did any red flags go off with you  
19 when you found out that two female employees  
20 felt that they were receiving negative  
21 comments from their -- the executive vice  
22 president of sales, and they didn't feel  
23 comfortable coming to you? And you knew there  
24 was people in the past had said that they  
25 weren't comfortable raising issues about

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1 D. Berardo  
 2 Thomas Kenny? Did any red flags go off in  
 3 your head at this --  
 4 MS. LEWIS: That's too vague.  
 5 MR. THOMAS:  
 6 Q: -- point?  
 7 A: So --  
 8 MR. THOMAS: Objection to form.  
 9 THE WITNESS: So I don't know --  
 10 you're saying that they didn't feel  
 11 comfortable coming to me, and I think  
 12 that's a misrepresentation of the facts.  
 13 Unless they said that --  
 14 BY MR. THOMAS:  
 15 Q: Well, they didn't come to you. Did  
 16 it raise a red flag to you that they didn't  
 17 come to you and people had reported being  
 18 uncomfortable about raising issues about  
 19 Thomas Kenny?  
 20 MR. SULLIVAN: Objection to form.  
 21 THE WITNESS: Well, I spoke with them  
 22 about it, and they felt comfortable  
 23 speaking with me when I spoke to them about  
 24 it.  
 25 BY MR. THOMAS:

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1 D. Berardo  
 2 Q: So this didn't raise any red flags to  
 3 you, then?  
 4 MR. SULLIVAN: Objection to form.  
 5 THE WITNESS: I mean, it -- when  
 6 would it have raised red flags? After the  
 7 fact -- after when I spoke with them?  
 8 BY MR. THOMAS:  
 9 Q: I'm just asking you if it did or  
 10 didn't. During the conversation, after the  
 11 conversation, at any point --  
 12 A: It --  
 13 Q: -- did it raise any red flags with  
 14 you?  
 15 A: It didn't. Because from -- from --  
 16 what I recall of the conversation is that  
 17 they -- they didn't -- you know, again, they  
 18 -- they -- they brushed it off. They didn't  
 19 view it as discriminatory.  
 20 Q: Well, why did they brush it off  
 21 again? I -- we keep coming back to that. Why  
 22 did they brush it off?  
 23 MR. SULLIVAN: Objection to form.  
 24 THE WITNESS: I don't know. I don't  
 25 -- I don't recall.

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1 D. Berardo  
 2 BY MR. THOMAS:  
 3 Q: Why did they tell you they brushed it  
 4 off?  
 5 A: I don't recall.  
 6 Q: Why don't -- what did -- what did you  
 7 say in your email that -- of why they brushed  
 8 it off?  
 9 A: Well, it -- it says there they 'know  
 10 how TK is.'  
 11 Q: M'mm-hmm. What do you -- red flags  
 12 didn't go off in your head when two females  
 13 tell you that they brushed off negative sexual  
 14 discriminatory comments from their manager  
 15 because they knew that's how he is?  
 16 MR. SULLIVAN: Objection to form.  
 17 THE WITNESS: We were -- we were  
 18 investigating this comment, so it was a bit  
 19 too late for red flags to go off in my  
 20 head, because we were already investigating  
 21 the comment.  
 22 BY MR. THOMAS:  
 23 Q: Well, there -- well, what about -- do  
 24 you mean it's too -- it's too late to -- what  
 25 do you mean by it's too late?

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1 D. Berardo  
 2 A: Well, I was already speaking with  
 3 them, so when a red flag usually goes off in  
 4 my head is if -- is if we're just finding out  
 5 about something for the first time.  
 6 Q: Aren't you just finding out about  
 7 something for the first time here?  
 8 A: Well, we were finding out -- we -- we  
 9 knew that Thomas had allegedly said something,  
 10 and we were investigating the comment. We  
 11 talked to seven employees, according to the  
 12 email, and three of the employees remember the  
 13 comment. So --  
 14 Q: My question to you is, yes or no, red  
 15 flags went off in your head or didn't go off  
 16 in your head when these women reported this to  
 17 you?  
 18 A: I --  
 19 MR. SULLIVAN: Objection to form.  
 20 THE WITNESS: I don't recall if red  
 21 flags went off in my head.  
 22 BY MR. THOMAS:  
 23 Q: Did you do any follow-up  
 24 investigation on what they said?  
 25 MR. SULLIVAN: Objection to form.



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1 D. Berardo  
2 THE WITNESS: So from what I recall,  
3 this was -- this was the investigation, and  
4 I don't recall -- I don't recall what was  
5 done after this.  
6 BY MR. THOMAS:  
7 Q: Were Thomas Kenny's comments  
8 acceptable --  
9 MR. SULLIVAN: Objection --  
10 BY MR. THOMAS:  
11 Q: -- under Absolute's HR policy and  
12 hiring criteria?  
13 MR. SULLIVAN: Objection to form.  
14 THE WITNESS: I don't have the policy  
15 in front of me, so I can't speak to the  
16 policy. I think --  
17 BY MR. THOMAS:  
18 Q: Does that help -- let me ask you  
19 this: Did -- is what Thomas Kenny said  
20 appropriate [lost connection] hiring criteria?  
21 MR. SULLIVAN: Objection to form.  
22 THE WITNESS: So if we're taking -- I  
23 mean, if we're taking his quotes as what he  
24 actually said, I -- you know, I would say  
25 it's -- it's not -- and -- and if you're

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1 D. Berardo  
2 interpreting it like you -- like you...  
3 BY MR. THOMAS:  
4 Q: I'm not interpreting it. I'm just  
5 asking. I -- thank you for your answer.  
6 What did you do to Thomas Kenny for  
7 making these comments?  
8 MR. SULLIVAN: Objection to form.  
9 THE WITNESS: We -- we investigated  
10 the comments. From what I recall, the  
11 company determined that there was nothing  
12 further to investigate.  
13 BY MR. THOMAS:  
14 Q: And what sort of disciplinary action  
15 was taken against an executive vice president  
16 who made inappropriate hiring comments which,  
17 in turn, made women feel in a negative way?  
18 MR. SULLIVAN: Objection to form.  
19 THE WITNESS: I don't -- I don't  
20 recall -- I don't recall what was done.  
21 BY MR. THOMAS:  
22 Q: You don't recall taking any action  
23 against Thomas Kenny, do you?  
24 A: Well, I -- I don't recall what action  
25 was taken. I'm -- I'm sure --

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1 D. Berardo  
2 Q: Was any action taken?  
3 A: I don't recall.  
4 Q: Okay. Do you have any documents that  
5 indicate any action was taken?  
6 A: I mean, I don't -- I don't work for  
7 the company anymore, so...  
8 Q: When you were there from -- well, you  
9 were there at the time. Do you remember  
10 taking any action?  
11 A: What I'm saying is I don't recall --  
12 I don't recall what was discussed; if it was a  
13 verbal, or if there was something else that  
14 was done. I -- I don't remember.  
15 Q: Was there a verbal?  
16 A: I don't remember. I don't recall.  
17 Q: Should some action have been taken  
18 against Thomas Kenny?  
19 MR. SULLIVAN: Objection to form.  
20 THE WITNESS: We investigated, and --  
21 BY MR. THOMAS:  
22 Q: My question is should any action have  
23 been taken against him?  
24 A: So we --  
25 MR. SULLIVAN: Objection to form.

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1 D. Berardo  
2 THE WITNESS: We investigated, and it  
3 was determined --  
4 BY MR. THOMAS:  
5 Q: I'm not asking you whether you  
6 investigated. I'm asking you should any  
7 action have been taken against him?  
8 A: So the --  
9 MR. SULLIVAN: Objection to form.  
10 THE WITNESS: The action was -- doing  
11 an investigation was part of the action  
12 against him. Because we're --  
13 BY MR. THOMAS:  
14 Q: Oh, so just investigating him is  
15 action against him?  
16 A: Well, if the investigation finds that  
17 something was -- was inappropriate and against  
18 company policy, then there would be action  
19 against that employee.  
20 Q: And just doing the investigation is  
21 taking sort of a personnel action against  
22 somebody in the company, isn't it?  
23 MR. SULLIVAN: Objection to form.  
24 THE WITNESS: Sorry, what do you mean  
25 by that question?

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1 D. Berardo  
 2 BY MR. THOMAS:  
 3 Q: Well, I think you said just doing the  
 4 investigation was action enough.  
 5 A: No -- no, I --  
 6 Q: [Indiscernible] --  
 7 A: -- didn't -- I didn't say that. I  
 8 didn't say it's --  
 9 Q: Okay.  
 10 A: -- action enough.  
 11 Q: But doing an investigation was part  
 12 of the company's action against him; correct?  
 13 A: Well, it's -- it's part of -- I mean,  
 14 it's part of -- when someone makes a  
 15 complaint, an investigation is -- is -- is an  
 16 action you take towards finding out the facts  
 17 and the truth and coming up with a resolution.  
 18 Q: What were the facts and the truth  
 19 here?  
 20 A: What were the facts and the truth  
 21 here?  
 22 MR. SULLIVAN: Objection to form.  
 23 THE WITNESS: I mean, the -- the  
 24 facts were that Mary had alleged that this  
 25 comment was made, and -- and we -- we

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1 D. Berardo  
 2 investigated what he meant by each of these  
 3 comments -- or each of his comments, and it  
 4 was determined that -- it was determined  
 5 that -- that -- that the intent of the  
 6 comments were not -- were not based on any  
 7 sort of discrimination.  
 8 BY MR. THOMAS:  
 9 Q: Where was that determination  
 10 recorded?  
 11 MR. SULLIVAN: Objection to form.  
 12 THE WITNESS: I mean, I -- I don't  
 13 recall. I mean, part of it is here on --  
 14 MR. THOMAS: Okay. We request the  
 15 production of any documents reflecting any  
 16 determination, any action, anything  
 17 involving Tom Kenny and the company's  
 18 investigation.  
 19 BY MR. THOMAS:  
 20 Q: Let me ask you -- you said it was  
 21 determined. The truth -- the truth was that  
 22 he did make those comments; correct?  
 23 MR. SULLIVAN: Objection to form.  
 24 THE WITNESS: That's not what I said.  
 25 He was alleged --

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1 D. Berardo  
 2 BY MR. THOMAS:  
 3 Q: I'm asking you now.  
 4 A: So he was alleged to have made those  
 5 comments. He --  
 6 Q: Did he -- did he make -- did he make  
 7 them?  
 8 MR. SULLIVAN: Objection to form.  
 9 THE WITNESS: So he didn't deny the  
 10 comments. I don't -- I don't recall if  
 11 he -- I mean, I -- I don't recall what he  
 12 said.  
 13 BY MR. THOMAS:  
 14 Q: Well, you weren't there, but what --  
 15 you can look at your emails. What was he  
 16 alleged to have said?  
 17 A: Well, he was -- he was alleged to  
 18 have said what -- what Mary -- what you had  
 19 brought forward during our negotiations.  
 20 Q: And did you come to -- what  
 21 conclusion did you come to as to whether he  
 22 made those comments?  
 23 A: So I'm not sure if we ever came to a  
 24 conclusion if he or if he didn't make those  
 25 exact comments.

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1 D. Berardo  
 2 Q: Okay.  
 3 A: I don't recall.  
 4 Q: But, Mr. Berardo, you're telling me  
 5 under oath that as an HR official and -- and  
 6 you have an executive vice president for sales  
 7 who tells a room of sales employees 'the CEO  
 8 does not want to hire people who are at the  
 9 end of their rainbow; he just wants to hire  
 10 guys who are athletes, talk trash, and are  
 11 aggressive.' You're telling me that you never  
 12 came to a conclusion as to whether he said  
 13 that or not?  
 14 MR. SULLIVAN: Objection to form.  
 15 THE WITNESS: I -- I don't -- I don't  
 16 recall -- I don't recall the specific notes  
 17 from the -- with our conversations with the  
 18 witnesses there. I mean, I wasn't -- I  
 19 wasn't there.  
 20 BY MR. THOMAS:  
 21 Q: That's not my question. Do you  
 22 remember what my question was, Mr. Berardo?  
 23 A: No. Go ahead. Repeat it.  
 24 Q: Okay. My question to you is -- well,  
 25 actually, I will have the court reporter read

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1 D. Berardo  
2 it back.  
3 A: Sure.  
4 (REPORTER READ BACK)  
5 THE WITNESS: I -- I don't recall if  
6 we came to a conclusion or not.  
7 BY MR. THOMAS:  
8 Q: You should have -- you should have,  
9 though, one way or the other; right?  
10 MR. SULLIVAN: Objection to form.  
11 THE WITNESS: I don't know if we  
12 should have or shouldn't have. I just know  
13 that -- I don't recall -- I don't recall  
14 the conversations around if it was  
15 determined whether he said that or not.  
16 BY MR. THOMAS:  
17 Q: Well, if you're supposed to come to  
18 the truth of an allegation, how can you do  
19 that if you don't determine whether the person  
20 said what was supposed -- what they said was  
21 said?  
22 MR. SULLIVAN: Objection to form.  
23 THE WITNESS: Well, I think it came  
24 down to -- I mean, his words could be  
25 interpreted different ways by different

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1 D. Berardo  
2 people. So it's -- sometimes it's very  
3 difficult to come to the absolute truth.  
4 BY MR. THOMAS:  
5 Q: So you -- you found that -- you found  
6 his statement here and his non-denial that he  
7 made them difficult to decide what to do?  
8 MR. SULLIVAN: Objection to form.  
9 THE WITNESS: So from what I recall,  
10 it -- it -- it wasn't -- it -- it wasn't  
11 clear. It wasn't black and white. It  
12 was -- you know, he explained what he meant  
13 by -- by what he said. And it was  
14 interpreted differently -- it was  
15 interpreted differently.  
16 BY MR. THOMAS:  
17 Q: Is this an example of Mr. Kenny's  
18 professionalism -- professionalism that you  
19 thought so highly of?  
20 MR. SULLIVAN: Objection to form.  
21 THE WITNESS: Is this an example of  
22 his professionalism? I mean, you're asking  
23 for my opinion?  
24 BY MR. THOMAS:  
25 Q: As an HR person, yes.

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1 D. Berardo  
2 MR. SULLIVAN: Objection to form.  
3 BY MR. THOMAS:  
4 Q: Is this a professional HR way to  
5 approach hiring decisions and communications  
6 with employees?  
7 A: So --  
8 MR. SULLIVAN: Objection to form.  
9 THE WITNESS: So I don't think this  
10 was a way to -- this was never -- he was  
11 never directed to hire people. I can  
12 attest to that --  
13 BY MR. THOMAS:  
14 Q: Well, what were the first three --  
15 what are the first three words of the comment?  
16 Or the first five words?  
17 A: So the first five --  
18 Q: 'The CEO does not want to hire.'  
19 A: So that's what --  
20 Q: That's what you're saying doesn't  
21 relate to hiring decisions?  
22 A: So that's what alleged -- that's what  
23 alleged -- yeah, that's the alleged quote.  
24 Q: Alleged quote is the one that he does  
25 not deny making; right?

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1 D. Berardo  
2 A: It says that Thomas did not deny he  
3 -- that he said these comments, but they were  
4 taken out of context, yes.  
5 Q: Okay. So he doesn't deny that he  
6 said the CEO does not want to hire people who  
7 are at the end of their rainbow; he just wants  
8 to hire guys who are athletes, talk trash, and  
9 are aggressive. Is this an example of a  
10 professional, buttoned-down comment by Thomas  
11 Kenny?  
12 MR. SULLIVAN: Objection to form.  
13 THE WITNESS: I mean, no.  
14 BY MR. THOMAS:  
15 Q: Did it -- did it surprise you that he  
16 would make such a comment?  
17 MR. SULLIVAN: Objection to form.  
18 THE WITNESS: So it -- did it  
19 surprise -- yeah, I mean, from what I  
20 recall, I was a bit surprised that he  
21 said -- that it was alleged that he said  
22 this.  
23 BY MR. THOMAS:  
24 Q: And that he didn't deny that he said  
25 it?

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1 D. Berardo  
2 MR. SULLIVAN: Objection to form.  
3 BY MR. THOMAS:  
4 Q: You keep saying 'alleged.' He  
5 'allegedly' said it. Do you think we can drop  
6 'allegedly' at this point because he doesn't  
7 deny that he said it?  
8 MS. LESTRADE: No.  
9 MR. SULLIVAN: Objection to form.  
10 BY MR. THOMAS:  
11 Q: Or do you still want to say  
12 'alleged'?  
13 A: Well, from -- from what I recall, I  
14 mean, the -- the quote is very specific, and  
15 he wasn't sure -- he wasn't sure exactly what  
16 he said. So I would hate for it to be  
17 the truth -- I would hate for it to be brought  
18 forward as the absolute truth, because, from  
19 what I recall, you know, he didn't -- he  
20 didn't -- he didn't remember it exactly like  
21 it was -- like it was said. He just didn't  
22 deny that --  
23 Q: You don't --  
24 A: -- something like --  
25 Q: Yeah, you -- you don't --

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1 D. Berardo  
2 A: -- that was said.  
3 Q: -- mention that in either Exhibit 36  
4 or 37 that he doesn't remember it exactly, do  
5 you?  
6 A: Sorry?  
7 Q: You don't mention anywhere in  
8 Exhibit 36 or 37 that he doesn't remember it  
9 exactly, do you?  
10 A: I don't know. A lot of this is  
11 redacted, so --  
12 Q: No, no, I'm asking you in -- anywhere  
13 in 36 or 37 --  
14 A: Oh, sure.  
15 Q: -- did he -- did you say that he  
16 didn't remember it exactly?  
17 A: No, I don't think -- not -- not in --  
18 not in what I'm looking at right now, I did  
19 not say that.  
20 Q: And -- and, in fact, the female  
21 employees said they know how he is; right?  
22 MR. SULLIVAN: Objection to form.  
23 THE WITNESS: They know how TK is,  
24 yes. That's what's down here.  
25 BY MR. THOMAS:

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1 D. Berardo  
2 Q: Okay. And who were the two female  
3 employees you talked to?  
4 A: So I don't know for -- I don't know  
5 for certain. I -- I believe one was Myra.  
6 Q: Myra Moy-Gregory?  
7 A: Yes.  
8 Q: And the second? Amy Rathbun?  
9 A: Amy Rathbun, yes.  
10 Q: Do you think they were being honest  
11 with you?  
12 MR. SULLIVAN: Objection to form.  
13 THE WITNESS: I -- I don't know -- I  
14 don't -- I can't answer what -- what  
15 they -- if they were being honest or if  
16 they were not being honest. I mean, I  
17 would assume -- I would think that they  
18 would be honest with me, yes.  
19 BY MR. THOMAS:  
20 Q: Now, is it indicative of Absolute  
21 culture that the executive vice president for  
22 sales can say 'the CEO does not want to hire  
23 people who are at the end of their rainbow; he  
24 just wants to hire guys who are athletes, talk  
25 trash, and are aggressive,' and suffer no

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1 D. Berardo  
2 repercussions for doing so?  
3 MR. SULLIVAN: Objection to form.  
4 THE WITNESS: Again, I -- I don't  
5 know if he suffered any repercussions --  
6 BY MR. THOMAS:  
7 Q: If he didn't suffer any, that -- it's  
8 okay at Absolute?  
9 MR. SULLIVAN: Objection to form.  
10 THE WITNESS: If he -- if he  
11 didn't -- sorry, if he didn't?  
12 BY MR. THOMAS:  
13 Q: Are you aware of any -- are you aware  
14 of any negative consequences he suffered?  
15 A: I mean, I -- I don't recall. I mean,  
16 Thomas was --  
17 Q: Okay. Is that -- is that --  
18 A: Thomas was --  
19 Q: -- acceptable, under Absolute  
20 culture, to make comments like this and no one  
21 have any record of any negative repercussion  
22 to him whatsoever?  
23 MR. SULLIVAN: Wait a minute.  
24 Will you -- will you finish your  
25 prior answer.

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1 D. Berardo  
 2 THE WITNESS: Can you read back what  
 3 I was...  
 4 (REPORTER READ BACK)  
 5 THE WITNESS: I mean, I was going to  
 6 say Thomas was eventually terminated from  
 7 Absolute.  
 8 BY MR. THOMAS:  
 9 Q: How long after this?  
 10 A: I -- I think it was after I left.  
 11 Q: So we're talking a year?  
 12 A: So, no, I left at the end of -- I  
 13 left at the end of 2016. So this was six  
 14 months -- I don't remember if Thomas was  
 15 terminated before or after. I'm sure we can  
 16 get that to you.  
 17 Q: Yeah, we -- we have that information.  
 18 A: Sure.  
 19 Q: But setting aside -- we have the  
 20 reason for his termination. Leaving -- I will  
 21 just represent to you they're not because of  
 22 this.  
 23 Is there any -- is it indicative of  
 24 the culture at Absolute that a person can make  
 25 a comment like Thomas Kenny did and suffer no

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1 D. Berardo  
 2 repercussions?  
 3 MR. SULLIVAN: Objection to form.  
 4 THE WITNESS: If the -- if the  
 5 comment -- if the comment was found to be  
 6 discriminatory, I would say that it would  
 7 not be indicative of the culture. But we  
 8 -- we investigated, and it was determined  
 9 that the -- his intentions were not to be  
 10 discriminatory.  
 11 BY MR. THOMAS:  
 12 Q: And because he didn't have that  
 13 intention, he suffered no repercussions for  
 14 what he said?  
 15 MR. SULLIVAN: Objection to form.  
 16 THE WITNESS: Again, I don't -- I  
 17 don't recall if there were any  
 18 repercussions or not.  
 19 BY MR. THOMAS:  
 20 Q: I'm asking you would it be indicative  
 21 of Absolute culture that a person could say  
 22 this, regardless of --  
 23 MS. LESTRADE: Asked and --  
 24 BY MR. THOMAS:  
 25 Q: -- their intentions --

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1 D. Berardo  
 2 MS. LESTRADE: -- answered.  
 3 BY MR. THOMAS:  
 4 Q: -- and suffer no negative  
 5 repercussions? Would that be indicative of  
 6 how you all ran things?  
 7 A: I think --  
 8 MR. SULLIVAN: Objection to form.  
 9 THE WITNESS: -- I already answered  
 10 that question.  
 11 BY MR. THOMAS:  
 12 Q: Which is, yes, that it --  
 13 MR. SULLIVAN: Objection to --  
 14 BY MR. THOMAS:  
 15 Q: -- could be indicative?  
 16 MR. SULLIVAN: Objection to form.  
 17 THE WITNESS: No, I don't think  
 18 that's what I said.  
 19 BY MR. THOMAS:  
 20 Q: I said regardless of his intentions.  
 21 Let's assume his intentions were fine.  
 22 A: His intentions were fine --  
 23 Q: It's fine for someone to say this if  
 24 they have good intentions, and nothing happens  
 25 to them at Absolute? That's the kind of

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1 D. Berardo  
 2 culture you all have?  
 3 MR. SULLIVAN: Objection to form.  
 4 THE WITNESS: That's not the type of  
 5 culture we have.  
 6 BY MR. THOMAS:  
 7 Q: But that's what happened here.  
 8 MR. SULLIVAN: Objection to form.  
 9 THE WITNESS: I think that comments  
 10 can be interpreted in a number of different  
 11 ways to a number of different people.  
 12 BY MR. THOMAS:  
 13 Q: And some are acceptable?  
 14 MR. SULLIVAN: Objection to form.  
 15 THE WITNESS: I mean, that's --  
 16 that's -- that would be someone's opinion,  
 17 if they're acceptable or not.  
 18 BY MR. THOMAS:  
 19 Q: Well, let me ask you this: As an HR  
 20 person, is this an acceptable comment for an  
 21 executive vice president of sales to make,  
 22 regardless of their intention?  
 23 MR. SULLIVAN: Objection to form.  
 24 THE WITNESS: I think that there  
 25 would -- there would be some coaching after

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1 D. Berardo  
2 for sure. If -- if it wasn't -- if it  
3 was -- there is -- there's better ways to  
4 say it, yes.  
5 BY MR. THOMAS:  
6 Q: So, no, it's not acceptable; correct?  
7 MR. SULLIVAN: Objection to form.  
8 THE WITNESS: It's not for me to  
9 determine whether it's acceptable or not.  
10 BY MR. THOMAS:  
11 Q: You're -- but, I mean, you're head of  
12 HR.  
13 A: Well --  
14 Q: What do you mean it's not up to you  
15 to determine whether a discriminatory comment  
16 is acceptable or not?  
17 A: So --  
18 MR. SULLIVAN: Objection to form.  
19 THE WITNESS: So, again, we're -- we  
20 -- we determined --  
21 BY MR. THOMAS:  
22 Q: Wait, wait, wait. I want to get back  
23 to that. It's not your job? It's not your  
24 job to determine whether this -- a  
25 discriminatory comment is acceptable or not?

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1 D. Berardo  
2 A: That --  
3 Q: You really -- do you stand by that?  
4 A: No, that's not what I said. You're  
5 --  
6 Q: Well, let's read back your answer.  
7 A: You're now --  
8 MR. THOMAS: Court reporter, can you  
9 read back his answer --  
10 THE WITNESS: You're --  
11 MR. THOMAS: -- about what he said  
12 about it being his job.  
13 THE WITNESS: Can you also read back  
14 his question, though, so it's not taken out  
15 of context.  
16 MR. THOMAS: Absolutely. Please read  
17 the question and answer back.  
18 (REPORTER READ BACK)  
19 THE WITNESS: So what I meant --  
20 BY MR. THOMAS:  
21 Q: It's not -- it's not for you to  
22 determine whether a comment like this is  
23 acceptable or not?  
24 A: So if I -- so --  
25 MR. SULLIVAN: Objection to form.

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1 D. Berardo  
2 THE WITNESS: So when you speak like  
3 that, it -- it just -- it confuses me a bit  
4 on -- on what we -- we've just talked  
5 about.  
6 Can you just read back --  
7 BY MR. THOMAS:  
8 Q: All right. Let's -- let's start  
9 again.  
10 A: Thank --  
11 Q: Is it your job to determine whether a  
12 comment about people -- that people make about  
13 hiring criteria of the company are acceptable  
14 or not?  
15 A: Well, if they're -- yeah, if  
16 they're -- if they're discriminatory or not,  
17 that is -- that is part of my job.  
18 Absolutely.  
19 Q: Okay. And do you find the comment  
20 that Thomas -- when you -- when you were head  
21 of HR for Absolute, did you find the comment  
22 that Thomas Kenny made acceptable or not?  
23 A: Through the investigation, we  
24 determined that it -- there wasn't any sort of  
25 discrimination. His intent was not

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1 D. Berardo  
2 discriminatory. As I said before, there are  
3 better ways -- there were better -- there  
4 would be better ways to -- to say what he was  
5 trying to say.  
6 Were they discriminatory? We determined  
7 that they weren't. I don't know what -- what  
8 more you want me to say about that.  
9 Q: Just the truth.  
10 A: That -- that's the truth.  
11 Q: That it was acceptable?  
12 MR. SULLIVAN: Objection --  
13 MS. LESTRADE: Oh, my god.  
14 MR. SULLIVAN: Objection to form.  
15 BY MR. THOMAS:  
16 Q: I mean, it's not -- I mean,  
17 Mr. Berardo, it's acceptable, or it's not. I  
18 will let you choose which -- I mean, I -- I  
19 just need the -- I just want the truth. Did  
20 you find it acceptable or not acceptable, what  
21 he said?  
22 A: Well, I don't think it's --  
23 MR. SULLIVAN: Objection to form.  
24 THE WITNESS: I don't think it's --  
25 it's -- it's black and white. Again,

1 D. Berardo  
2 there's -- there's different  
3 interpretations of the way different people  
4 say things. Or different -- different --  
5 people say things, and they can be  
6 interpreted differently, right, by  
7 different people.  
8 So we found that the way -- his  
9 intent was not discriminatory. And so  
10 could he have said it better? I already  
11 said yes. I don't know how to answer if it  
12 was acceptable or not and -- and in what  
13 context.  
14 BY MR. THOMAS:  
15 Q: Why is it not -- why is it not  
16 discriminatory to say that you want to hire  
17 guys who are athletes, talk trash, and get in  
18 each other's faces? Why is that not  
19 discriminatory?  
20 MR. SULLIVAN: Objection to form.  
21 THE WITNESS: Because we determined  
22 that what he meant -- what he was referring  
23 to were -- by 'guys' -- I mean, it says  
24 here by 'guys,' that's just the way he  
25 referenced all people, 'guys.' 'Hey, you

1 D. Berardo  
2 guys.' He says it in a generic term, like  
3 many people do. At no time did he ever  
4 mean men.  
5 So -- so when we looked -- when we  
6 looked and we asked him -- you know, again,  
7 we didn't find his intent to be  
8 discriminatory.  
9 BY MR. THOMAS:  
10 Q: However, you did find two women who  
11 the comment -- they interpreted it in a  
12 negative way?  
13 A: Sure, yes.  
14 Q: Right? So on one -- on one hand, you  
15 have two women who interpreted it in a  
16 negative way; on the other hand, you have an  
17 inappropriate comment, but you take the man's  
18 word that he didn't mean it in a  
19 discriminatory way. Is that how -- is that  
20 how it shook out?  
21 MR. SULLIVAN: Objection to form.  
22 THE WITNESS: No, because there --  
23 there -- there was context, and there was  
24 discussions with these two women. And  
25 sitting here today, I can't remember -- you

1 D. Berardo  
2 know, I can't remember what they meant by  
3 -- when they said they interpreted it in a  
4 negative way. Negative doesn't --  
5 BY MR. THOMAS:  
6 Q: What weight did you -- what weight  
7 did you give to their concerns?  
8 MR. SULLIVAN: Were you finished with  
9 your answer?  
10 THE WITNESS: I was saying negative  
11 --  
12 BY MR. THOMAS:  
13 Q: Were you -- yeah, were you finished?  
14 Did you have anything else?  
15 A: Yeah, I was going to say 'negative'  
16 doesn't necessarily mean 'discriminatory.'  
17 Q: Okay. What weight did you give to  
18 their comments?  
19 MR. SULLIVAN: Objection to form.  
20 THE WITNESS: We -- we would have  
21 given -- we would have given their -- their  
22 comments equal weight. Absolutely.  
23 BY MR. THOMAS:  
24 Q: Somehow, though, the man ends up not  
25 getting punished; correct?

1 D. Berardo  
2 MR. SULLIVAN: Objection to form.  
3 THE WITNESS: Because it was  
4 determined that his comments were not  
5 discriminatory.  
6 BY MR. THOMAS:  
7 Q: And one of the people that made that  
8 determination was Errol Olsen; correct?  
9 MR. SULLIVAN: Objection to form.  
10 THE WITNESS: I don't -- I don't  
11 recall who -- who all was involved with the  
12 determination.  
13 BY MR. THOMAS:  
14 Q: Well, why don't you turn to page  
15 DEFS09807, where you say:  
16 Hi, Aaron. Our CFO spoke to Thomas  
17 Kenny last week.'  
18 Who was your CFO?  
19 A: Our CFO was Errol Olsen.  
20 Q: So the guy who swam nude in front of  
21 employees at the -- at the gathering to whom  
22 HR reported is the one who is involved in this  
23 investigation; correct?  
24 MR. SULLIVAN: Objection to form.  
25 BY MR. THOMAS:

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1 D. Berardo  
2 Q: Just so I'm clear.  
3 MR. SULLIVAN: Objection to form.  
4 THE WITNESS: Errol was involved with  
5 the investigation.  
6 BY MR. THOMAS:  
7 Q: Right? And I -- just to be clear,  
8 he's the one who swam nude in front of other  
9 employees at an employee event; correct?  
10 MR. SULLIVAN: Objection to form.  
11 THE WITNESS: I wasn't there. I  
12 don't know. Again, it was gossip.  
13 BY MR. THOMAS:  
14 Q: And then, somehow, the man's word  
15 gets believed; right?  
16 MR. SULLIVAN: Objection to form.  
17 THE WITNESS: What -- what man's word  
18 gets believed?  
19 BY MR. THOMAS:  
20 Q: That would be Mr. Kenny's.  
21 MR. SULLIVAN: Objection to form.  
22 THE WITNESS: It was -- yeah, it was  
23 -- well, it was determined that -- that  
24 his -- you know, that his statement was not  
25 discriminatory.

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1 D. Berardo  
2 BY MR. THOMAS:  
3 Q: What a shock.  
4 MR. SULLIVAN: Is that a question?  
5 MR. THOMAS: No, just a statement.  
6 MR. SULLIVAN: Or a speech?  
7 MR. THOMAS: Actually, I don't think  
8 it was long enough for a speech, but  
9 whatever you -- whatever you want to call  
10 it is fine with me.  
11 MR. SULLIVAN: We'll call it a  
12 speech.  
13 MR. THOMAS: It was a part -- maybe a  
14 part of the closing statement.  
15 BY MR. THOMAS:  
16 Q: Have you ever heard about -- did you  
17 ever hear about the movie 'Mall Cops'?  
18 A: 'Mall Cops'?  
19 Q: Yes.  
20 A: I think so, yeah.  
21 Q: Do you remember the -- the joke in  
22 there was that mall cops -- all that mall cops  
23 do is observe and report?  
24 A: I -- I don't -- I don't recall that,  
25 no.

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1 D. Berardo  
2 Q: Okay. Do you feel that you were  
3 doing more in this situation than a mall cop,  
4 whose job was to observe and report?  
5 MR. SULLIVAN: Don't answer that.  
6 That's an insulting question. Don't answer  
7 that question.  
8 Move on.  
9 BY MR. THOMAS:  
10 Q: Did you do anything -- did you do  
11 anything more in this case besides observe and  
12 report?  
13 A: Clearly. We investigated.  
14 Q: You observed and you reported, but  
15 you didn't take any action, did you?  
16 MR. SULLIVAN: Objection to form.  
17 THE WITNESS: I don't recall which  
18 action we took. We had a -- we made a  
19 determination, which is action.  
20 BY MR. THOMAS:  
21 Q: And the action and determination was  
22 there was nothing -- there was nothing wrong  
23 here?  
24 A: There was no discrimination that  
25 was -- that was intended here, correct.

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1 D. Berardo  
2 Q: Did you attend the 2015 executive  
3 managers' meeting in Whistler?  
4 A: I -- I attended. I did attend an  
5 executive leadership team meeting in Whistler.  
6 I don't recall if it was 2015. It must have  
7 been.  
8 Q: Sorry, what was that?  
9 A: I said it must have been. I did  
10 attend an executive leadership team meeting in  
11 Whistler.  
12 Q: Do you remember any women being  
13 present there?  
14 A: I don't recall, no.  
15 Q: What was discussed in that meeting?  
16 A: It was a -- it was a lot of strategy.  
17 I mean, I --  
18 Q: Discussions about who were going to  
19 be retained, who were going to be let go?  
20 A: No. No. It was -- I -- from -- from  
21 -- from my recollection, it -- it wasn't that  
22 type of meeting. It was about the strategy of  
23 the company.  
24 Q: Was it about the reorganization?  
25 A: I don't remember if -- if we



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1 D. Berardo  
2 discussed any -- any reorganization. I don't  
3 recall.  
4 Q: Let me ask you did Amy Rathbun ever  
5 complain to you about her treatment at the  
6 company?  
7 A: Never.  
8 Q: And you wouldn't consider her  
9 comments to you on Exhibit 36 an example of  
10 complaining about that; right?  
11 A: I don't -- I don't remember our  
12 conversation specifically, so I can't even  
13 answer that question.  
14 Q: But she was one of the ones you  
15 interviewed; right?  
16 A: That's -- that -- from my  
17 recollection, yes.  
18 Q: And she interpreted Tom Kenny's  
19 comments in a negative way; right?  
20 A: That's what it says here, yes.  
21 Q: And that she knows that's how Tom  
22 Kenny is; right?  
23 A: They know how TK is. That's what it  
24 says, yes.  
25 Q: And you -- and you don't consider

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1 D. Berardo  
2 that her complaining about being -- feeling  
3 discriminated against?  
4 A: I don't recall our conversation, our  
5 specific conversation. I -- I know Amy and I  
6 had a lot of conversations, and -- and never  
7 once did it come up that she ever felt or  
8 interpreted comments as discriminatory.  
9 Q: Let's go now to Exhibit 38 and the  
10 answer to interrogatory 15, which is on  
11 page 17. If you go to the last sentence, it  
12 talks about who was at the meeting when Thomas  
13 Kenny made his comments. Do you see that?  
14 A: What page are we looking at? Sorry.  
15 Q: Page 17.  
16 A: Oh, 15 here?  
17 MS. LESTRADE: Yeah.  
18 THE WITNESS: Number 15?  
19 MR. SULLIVAN: Yes.  
20 THE WITNESS: Okay.  
21 MR. SULLIVAN: I think the question  
22 is on the prior page.  
23 THE WITNESS: Okay.  
24 BY MR. THOMAS:  
25 Q: All right. The culture that exists

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1 D. Berardo  
2 at Absolute resulted in none of those people  
3 telling you what Thomas Kenny said about the  
4 hiring criteria at Absolute; correct?  
5 MR. SULLIVAN: Objection to form.  
6 THE WITNESS: That's not correct.  
7 BY MR. THOMAS:  
8 Q: Did -- did any of them come to you  
9 and tell you --  
10 MR. SULLIVAN: Objection --  
11 BY MR. THOMAS:  
12 Q: -- without you asking them first?  
13 MR. SULLIVAN: Objection to form.  
14 THE WITNESS: No one told me about  
15 those comments.  
16 BY MR. THOMAS:  
17 Q: Okay. And that's consistent with how  
18 things happened at Absolute, isn't it?  
19 MR. SULLIVAN: Objection to form.  
20 THE WITNESS: That's incorrect.  
21 BY MR. THOMAS:  
22 Q: It's inconsistent?  
23 A: No, I said your statement is  
24 incorrect.  
25 Q: Okay. Why is it incorrect?

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1 D. Berardo  
2 A: Because you're -- you're making the  
3 assumption that no one would come or raise  
4 issues at Absolute, and that was the culture.  
5 Q: No one came or raised issues about  
6 Thomas Kenny's comment, did they? None of  
7 those people?  
8 A: About his comment, no.  
9 Q: That's the kind of culture that  
10 existed at Absolute, isn't it?  
11 MR. SULLIVAN: Objection to form.  
12 THE WITNESS: It -- that is -- I -- I  
13 don't agree with what you're saying.  
14 BY MR. THOMAS:  
15 Q: Why is -- why is -- why is that  
16 not -- is it consistent with the culture at  
17 Absolute or not consistent?  
18 MR. SULLIVAN: Objection to form.  
19 THE WITNESS: We have -- there --  
20 there was numerous times where people have  
21 come to raise concerns about various  
22 different issues, so it's not indicative of  
23 the culture.  
24 BY MR. THOMAS:  
25 Q: So this was a -- this was surprising,

1 D. Berardo  
2 that people didn't come to you about this?  
3 MR. SULLIVAN: Objection to form.  
4 THE WITNESS: I don't -- I don't  
5 remember my feelings.  
6 BY MR. THOMAS:  
7 Q: Sitting here today, are you surprised  
8 that people did not come to you about it?  
9 MR. SULLIVAN: Objection to form.  
10 BY MR. THOMAS:  
11 Q: Given the culture at Absolute at the  
12 time?  
13 MR. SULLIVAN: Objection to form.  
14 THE WITNESS: Do I find it  
15 surprising? I -- I think -- I think I  
16 mentioned before I would have liked -- you  
17 know, I would have appreciated if someone  
18 would have raised it to me.  
19 BY MR. THOMAS:  
20 Q: My question to you is it  
21 consistent with Absolute culture that no one  
22 came forward?  
23 A: I think I --  
24 MR. SULLIVAN: Objection to form.  
25 THE WITNESS: I've already answered

1 D. Berardo  
2 that question numerous times.  
3 BY MR. THOMAS:  
4 Q: And your answer is that it's  
5 inconsistent; correct?  
6 MR. SULLIVAN: Objection to form.  
7 THE WITNESS: The -- no one -- no one  
8 coming to me was inconsistent with what the  
9 culture generally was at Absolute.  
10 BY MR. THOMAS:  
11 Q: Were you aware at that Whistler --  
12 that Whistler meeting about employees that  
13 Absolute wanted to retain and intend to stay  
14 on?  
15 A: I don't -- I don't recall the  
16 conversation, off the top of my head.  
17 Q: Do you remember a point in time where  
18 Ms. Piehler was investigated regarding the  
19 Department of Education, the DOE?  
20 A: Yeah.  
21 Q: Tell me what you remember about that.  
22 A: That someone had raised concerns  
23 that -- that --  
24 Q: Who was that -- who was that someone?  
25 A: So I think, originally -- and -- and

1 D. Berardo  
2 this is -- my -- my memory may be failing me,  
3 so I -- I want to make sure I say that. But I  
4 think it was -- they didn't come directly to  
5 me, but -- but they -- but it was -- it was  
6 Matt Meanchoff. He raised it to someone. It  
7 could have been -- it was someone in finance,  
8 perhaps. It could have been Errol; it could  
9 have been Lee. I'm not sure. About Mary and  
10 her team booking business in a certain way,  
11 booking it as new business versus renewal  
12 business.  
13 Q: Did you participate in the  
14 investigation of the DOE issue?  
15 A: Limitedly.  
16 Q: What -- tell -- describe your role.  
17 A: So from -- from what I recall, I had  
18 sat on -- I sat -- sat on an interview or two,  
19 but it was largely a -- it was largely a  
20 number. So they were -- they were trying to  
21 find out -- trying to find out how these  
22 numbers got booked into where. So it was  
23 largely, I think, run by finance. Perhaps  
24 legal. I don't recall specifically.  
25 Q: Who -- who do -- what interviews do

1 D. Berardo  
2 you remember sitting in on?  
3 A: I don't -- I don't recall off the top  
4 of my head.  
5 Q: Were you aware that regional  
6 directors are generally not responsible for  
7 recording orders on sales in their region?  
8 A: They would ultimately be responsible  
9 because they have people reporting in to them,  
10 so they do have the ultimate responsibility.  
11 Q: But they're -- but you understand  
12 they're not the ones responsible for entering  
13 the sales or the orders; correct?  
14 A: Well, the -- the data entry? They  
15 wouldn't -- I -- to my knowledge, they  
16 wouldn't be, actually, data-inputting the  
17 numbers into the system. That wouldn't be  
18 their --  
19 Q: Or deciding where they should go;  
20 correct?  
21 A: No, ultimately -- so -- ultimately, I  
22 believe that's their responsibility. That's  
23 just my understanding of it. I -- I -- I was  
24 not in sales ops, and I didn't really have  
25 visibility into how business was booked,

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1 D. Berardo  
 2 specifically. But -- but the regional --  
 3 regional directors would -- would ultimately  
 4 be responsible for the team that they have  
 5 under them.  
 6 Q: Did you know that Absolute  
 7 investigated Mary Piehler and her subordinate,  
 8 Charles Springgay, in relation to the issue of  
 9 the DOE?  
 10 A: Yes.  
 11 Q: And what is the race of Charles  
 12 Springgay?  
 13 A: I mean, I don't know the specific  
 14 race. He is -- he --  
 15 Q: African American?  
 16 A: No. Charles Springgay would be --  
 17 would be of Asian decent, perhaps.  
 18 Q: Do you know or not know?  
 19 A: I mean, I -- I'm -- I would only  
 20 visually -- be visually observing. So I don't  
 21 know for certain what his background was.  
 22 Q: Fair to say that he's a racial  
 23 minority?  
 24 A: It depends how you define racial  
 25 minority. In --

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1 D. Berardo  
 2 Q: As an HR person.  
 3 A: In Vancouver -- in Vancouver, he  
 4 would not be considered a racial minority.  
 5 Q: In the United States, would he be  
 6 considered a racial minority?  
 7 MR. SULLIVAN: Objection to form.  
 8 THE WITNESS: I believe so.  
 9 BY MR. THOMAS:  
 10 Q: Now, Mary Piehler and Charles  
 11 Springgay were investigated, but Mike Kenny -  
 12 Mike Kenny and his subordinate, Justin  
 13 Peacock, weren't investigated as part of this;  
 14 correct?  
 15 A: I don't --  
 16 Q: DOE.  
 17 A: I don't recall. I -- I don't know  
 18 the specifics. Or recall the specifics.  
 19 Q: Do you have any reason to believe  
 20 that Mike Kenny was investigated?  
 21 A: I don't even know if he was -- he was  
 22 employed at that time. I don't know. I don't  
 23 -- I don't recall.  
 24 Q: Do you have any reason to believe he  
 25 was investigated?

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1 D. Berardo  
 2 A: I don't recall.  
 3 Q: Why weren't Mike Kenny's commissions  
 4 held on his DOE orders?  
 5 MR. SULLIVAN: Objection to form.  
 6 THE WITNESS: I don't know.  
 7 BY MR. THOMAS:  
 8 Q: But Mary Piehler's were; correct?  
 9 MR. SULLIVAN: Objection to form.  
 10 THE WITNESS: I -- I don't recall the  
 11 specifics on -- on -- on that.  
 12 BY MR. THOMAS:  
 13 Q: Do you remember the time Mary  
 14 Piehler's commissions were withheld?  
 15 A: If you're asking me to answer with  
 16 certainty, I can't answer with certainty. I  
 17 don't remember.  
 18 Q: What is your recollection right now?  
 19 A: My recollection from -- from -- from  
 20 what I remember is that there was a number of  
 21 people who had their commission withheld  
 22 during the investigation. I --  
 23 Q: Who were -- who were they?  
 24 A: Well, so -- so under investigation, I  
 25 think it was Charles, Mary, and I think it was

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1 D. Berardo  
 2 Justin Peacock. Those were kind of --  
 3 Q: But not Ian Dunton, and not Mike  
 4 Kenny; correct?  
 5 A: I don't remember. Perhaps. I -- I  
 6 don't know.  
 7 Q: Did you approve of not paying Mary  
 8 her commissions for the DOE order -- for the  
 9 DOE orders, even though the investigation had  
 10 not been completed?  
 11 MR. SULLIVAN: Objection to form.  
 12 THE WITNESS: Did I approve us --  
 13 Hyperwallet not paying -- sorry, did I  
 14 approve Absolute not paying her  
 15 commissions?  
 16 BY MR. THOMAS:  
 17 Q: Yes.  
 18 A: That wouldn't have been my  
 19 determination.  
 20 Q: Were you involved in the  
 21 determination?  
 22 A: I don't recall.  
 23 Q: Why would someone's commission --  
 24 from an HR perspective, why would someone's  
 25 commissions be withheld when the investigation

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1 D. Berardo  
2 had not even been completed?  
3 MR. SULLIVAN: Objection to form.  
4 THE WITNESS: So I -- I can only -- I  
5 can only -- I can only speculate, like --  
6 BY MR. THOMAS:  
7 Q: No, I'm not asking you to speculate.  
8 As an HR manager at Absolute --  
9 A: Right.  
10 Q: -- why would an employee's  
11 commissions be held under your tenure when the  
12 investigation into the issue had not been  
13 completed?  
14 A: So --  
15 MR. SULLIVAN: Objection to form.  
16 THE WITNESS: -- are we talking about  
17 in general? Or are we talking about the  
18 specific incident?  
19 BY MR. THOMAS:  
20 Q: We'll take -- we'll take DOE  
21 specifically.  
22 A: Because I don't recall -- I don't  
23 recall why or why not for that --  
24 Q: Would there ever -- would there ever  
25 be a reason to withhold someone's commissions

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1 D. Berardo  
2 when an investigation hadn't been completed,  
3 again, in your role as head of HR at Absolute?  
4 MR. SULLIVAN: Objection to form.  
5 THE WITNESS: During an  
6 investigation, if we were investigating  
7 something, I think it -- it would be  
8 justified to withhold commissions.  
9 BY MR. THOMAS:  
10 Q: Would it be justified to withhold  
11 some people's commissions but not others?  
12 MR. SULLIVAN: Objection to form.  
13 THE WITNESS: I mean -- I mean, it  
14 would depend on the circumstances. I don't  
15 know how to answer that.  
16 BY MR. THOMAS:  
17 Q: What about withholding them from the  
18 minority female employees, but paying them to  
19 the white male employees? Would that be  
20 acceptable?  
21 A: No, it wouldn't --  
22 MR. SULLIVAN: Objection to form.  
23 THE WITNESS: It would not be  
24 acceptable to withhold or not withhold  
25 based on race or gender.

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1 D. Berardo  
2 BY MR. THOMAS:  
3 Q: Would that be consistent with  
4 Absolute's culture, though?  
5 A: Well --  
6 MR. SULLIVAN: Objection to form.  
7 THE WITNESS: -- absolutely not.  
8 BY MR. THOMAS:  
9 Q: Isn't it true that Mary Piehler was  
10 totally exonerated on the issue of the DOE  
11 orders?  
12 MR. SULLIVAN: Objection to form.  
13 THE WITNESS: I don't know if I would  
14 use those terms. I -- from what I recall,  
15 it was determined that -- that a definitive  
16 determination couldn't be made, and so the  
17 commissions were paid out as was booked.  
18 BY MR. THOMAS:  
19 Q: Isn't it true that Todd Awtry  
20 acknowledged that he had been told that that's  
21 how the commissions were paid?  
22 MR. SULLIVAN: Objection to form.  
23 BY MR. THOMAS:  
24 Q: Were going to be paid?  
25 A: I don't recall.

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1 D. Berardo  
2 Q: Well, then, how can -- how can you  
3 not recall that and recall that there was not  
4 complete exoneration for Mary Piehler?  
5 MR. SULLIVAN: Objection to form.  
6 THE WITNESS: Well, I -- I recall --  
7 well, I don't recall that -- you're asking  
8 me -- you're asking me a specific question  
9 about Todd. I don't remember that  
10 interaction with Todd.  
11 BY MR. THOMAS:  
12 Q: Do you remember there -- was there  
13 any wrongdoing associated with Mary Piehler  
14 coming out of the DOE investigation?  
15 A: I mean, I...  
16 Q: That you recall?  
17 A: That I recall?  
18 Q: Yeah.  
19 A: Not that I recall.  
20 Q: It's true that Todd Awtry tried to  
21 get Mary Piehler fired over the DOE  
22 commissions; correct?  
23 MR. SULLIVAN: Objection to form.  
24 THE WITNESS: Not that I recall, no.  
25 MR. THOMAS: If the court reporter

1 D. Berardo  
2 could show the witness Awtry Exhibit 73 as  
3 well as Exhibit 74.  
4 THE WITNESS: Just while we're doing  
5 that, can I just take a quick break?  
6 MR. SULLIVAN: Sure.  
7 VIDEOGRAPHER: Going off the record.  
8 The time is 3:49.  
9 (PROCEEDINGS RECESSED AT 3:49P.M.)  
10 (PROCEEDINGS RECONVENED AT 3:57 P.M.)  
11 VIDEOGRAPHER: Back on the record.  
12 The time is 3:57.  
13 BY MR. THOMAS:  
14 Q: Okay. Let me show you what has been  
15 marked as Exhibit 73 and 74. Once you've had  
16 a chance to read them, let me know.  
17 A: Sure. Okay.  
18 Q: Does -- do these exhibits refresh  
19 your recollection as to whether Todd Awtry was  
20 trying to get Mary Piehler fired over the DOE  
21 issue?  
22 A: Does it -- does it -- I mean, I don't  
23 know how to answer that question. I mean,  
24 I -- I see here he asks -- he asks us:  
25 Do we have enough grounds to -- for

1 D. Berardo  
2 termination for all three?'  
3 Q: And what does he say immediately  
4 after that?  
5 A: So he says:  
6 I believe we do, but I want others'  
7 thoughts.'  
8 Q: So does that suggest to you that Todd  
9 Awtry was trying to get Mary Piehler fired  
10 over the DOE issue?  
11 A: No, I would say that he was asking  
12 for multiple people's opinions on if there was  
13 enough grounds for termination.  
14 Q: What was his opinion?  
15 A: Well, he says:  
16 I believe we do, but want others'  
17 thoughts.'  
18 Q: Yeah, so what was his opinion?  
19 A: 'I believe we do, but we want other's  
20 thoughts.'  
21 Q: No, no, I didn't ask you -- what --  
22 what was his opinion. His opinion was 'I  
23 believe we do'; correct?  
24 A: Oh.  
25 MR. SULLIVAN: Objection to form.

1 D. Berardo  
2 THE WITNESS: Sure. 'I believe we  
3 do.'  
4 BY MR. THOMAS:  
5 Q: All right. And then what did you --  
6 do you remember responding to him at all?  
7 A: I don't recall off the top -- I don't  
8 -- I don't recall if I responded or -- or  
9 didn't. I don't know.  
10 Q: Okay. Was this the email you saw in  
11 preparation for this deposition today?  
12 A: I don't -- I mean, thinking back, I  
13 think at one point, we did look at this email  
14 on Exhibit 73, but not -- I don't recall  
15 looking at 74. I could be wrong.  
16 Q: And on 74, he pushes again, doesn't  
17 he, for an answer to his question as to  
18 whether Mary Piehler can be fired, and he  
19 thought that there were grounds to do so.  
20 Right?  
21 MR. SULLIVAN: Objection to form.  
22 THE WITNESS: Response to my  
23 question. I don't know what he was  
24 referring to.  
25 BY MR. THOMAS:

1 D. Berardo  
2 Q: What question had he asked the day  
3 before to the same recipients?  
4 A: So this was June 27th, 2014, at 10:33  
5 a.m. And then June 26th at 5:03 to Lee,  
6 Michael, Matt -- well, Matt's on this email,  
7 but not on this email. So it's not the same  
8 recipients. But on the --  
9 Q: Almost -- almost -- almost identical  
10 recipients. Fair to say?  
11 A: And here he includes Michael Kenny  
12 and Thomas -- or, sorry, Michael Kenny was  
13 involved -- or was in the June 26th email, but  
14 Thomas --  
15 Q: It's virtually the same -- it's  
16 virtually the same recipients. And the next  
17 morning, he had [indiscernible] demanding an  
18 answer to his question, didn't he?  
19 MR. SULLIVAN: Objection to form.  
20 THE WITNESS: So I can't answer that  
21 because I don't know if this is related.  
22 BY MR. THOMAS:  
23 Q: And was...  
24 A: Like, the --  
25 Q: It's strange, isn't it --

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1 D. Berardo  
2 A: Okay.  
3 Q: -- that Todd Awtry is trying to get  
4 Mary Piehler fired, which is several months  
5 before Mary Piehler had told him about how the  
6 commissions would be allocated, and he thanked  
7 her for the heads-up. Right?  
8 MR. SULLIVAN: Object --  
9 BY MR. THOMAS:  
10 Q: Isn't that weird?  
11 MR. SULLIVAN: Objection to form.  
12 THE WITNESS: I think he was  
13 asking -- he was asking if there was enough  
14 grounds for termination.  
15 BY MR. THOMAS:  
16 Q: But why should there be enough  
17 grounds when three -- when, several months  
18 before, he was told by Mary this is the way  
19 things were going to be done, and he thanked  
20 her for it?  
21 MR. SULLIVAN: Objection to form.  
22 THE WITNESS: I'm sorry. What  
23 exhibit was at that? Just to --  
24 MR. THOMAS: If the court reporter  
25 could show him Exhibit Awtry 71.

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1 D. Berardo  
2 THE WITNESS: Okay.  
3 BY MR. THOMAS:  
4 Q: So March 17th, Todd is told exactly  
5 how this allocation is going to go. He thanks  
6 Mary Piehler for it. And in June, he's trying  
7 to get her fired over it. Does that -- does  
8 that concern you at all?  
9 A: Well --  
10 MR. SULLIVAN: Objection to form.  
11 THE WITNESS: -- all I see is -- is  
12 he -- him saying 'thanks for the -- for  
13 heads -- thanks for heads-up.'  
14 BY MR. THOMAS:  
15 Q: Okay.  
16 A: I don't see any --  
17 Q: Does this concern you at all that he  
18 knew this was how the DOE was going to be  
19 allocated; he said 'thanks for the heads-up';  
20 and then, several months later, was trying to  
21 fire Mary Piehler over it?  
22 MR. SULLIVAN: Objection to form.  
23 BY MR. THOMAS:  
24 Q: Does that concern you?  
25 A: Well, I don't -- I don't know if he

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1 D. Berardo  
2 was trying to fire Mary. He asked, 'Do we  
3 have grounds enough for termination?'  
4 Q: Does it concern you that he thought  
5 there were grounds enough for termination  
6 when, several months before, he had been told  
7 how the allocation was going to go, and he  
8 thanked Mary Piehler for the heads-up?  
9 MR. SULLIVAN: Objection to form.  
10 BY MR. THOMAS:  
11 Q: Does that concern you?  
12 A: I -- I don't know if he -- I don't  
13 know if he had agreed to this or he had forgot  
14 about this. You know...  
15 Q: My question to you is does it concern  
16 you?  
17 MR. SULLIVAN: Objection to form.  
18 THE WITNESS: I don't remember if it  
19 concerned me or not.  
20 BY MR. THOMAS:  
21 Q: Does it concern you sitting here  
22 today?  
23 MR. SULLIVAN: Objection to form.  
24 THE WITNESS: Well, knowing the  
25 facts, it doesn't concern me.

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1 D. Berardo  
2 BY MR. THOMAS:  
3 Q: Why?  
4 A: Just because this email seems pretty  
5 ambiguous.  
6 Q: How is it ambiguous when it precisely  
7 describes the issue that he accused her of  
8 doing that resulted -- that resulted in her  
9 termination?  
10 MR. SULLIVAN: Objection to form.  
11 THE WITNESS: Well, I don't -- I  
12 don't see him agreeing to -- to what she is  
13 proposing.  
14 BY MR. THOMAS:  
15 Q: You don't think 'thanks for the  
16 heads-up' is an agreement that the allocation  
17 is okay?  
18 A: I don't -- I don't think that.  
19 When -- when someone says 'thanks for the  
20 heads-up,' it doesn't say 'I agree,' no.  
21 Q: Okay. It -- can you think of any  
22 time in the company where a woman's word has  
23 been believed over a man's --  
24 MR. SULLIVAN: Objection to form.  
25 BY MR. THOMAS:

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1 D. Berardo  
2 Q: -- when you were the head of HR at  
3 Absolute?  
4 A: I mean, I -- absolutely, but I -- I  
5 can't think of specifics.  
6 Q: One example. Just give me one.  
7 A: I mean, I -- you're -- you're asking  
8 me something from five years -- five  
9 years-plus ago.  
10 Q: Yeah. Can you remember any time in  
11 the entire time you worked at Absolute for the  
12 five years that HR ever accepted the word of a  
13 man -- of a woman over a man?  
14 MR. SULLIVAN: Objection to form.  
15 THE WITNESS: I -- I -- off the top  
16 of my head, I can't recall situations on  
17 either -- either way. I mean...  
18 BY MR. THOMAS:  
19 Q: Well -- well, what about -- well, the  
20 last several we've been over, you have  
21 accepted the man's word over the woman's, no  
22 doubt. Right?  
23 MR. SULLIVAN: Objection to form.  
24 THE WITNESS: Sorry -- sorry, what  
25 are you referencing?

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1 D. Berardo  
2 BY MR. THOMAS:  
3 Q: I'm referencing Thomas Kenny's  
4 comment that made women feel uncomfortable,  
5 and they said that was typical of him, and  
6 nothing happened to Thomas Kenny, and --  
7 because it was believed it was not  
8 discrimination. I'm talking here about Todd  
9 Awtry approving the commission payments to  
10 Mary Piehler and trying to get her fired two  
11 months later and you, again, believing, as you  
12 sit here today, Todd Awtry over Mary Piehler.  
13 MR. SULLIVAN: Objection.  
14 THE WITNESS: That's --  
15 BY MR. THOMAS:  
16 Q: So those are two examples going that  
17 way. Can you think of any examples where a  
18 woman has ever been believed at Absolute over  
19 a man?  
20 A: So --  
21 MR. SULLIVAN: Objection to form.  
22 THE WITNESS: -- sorry, you -- the  
23 way you described that was not accurate.  
24 BY MR. THOMAS:  
25 Q: Okay. Let's -- let's go back to the

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1 D. Berardo  
2 point.  
3 A: Sure.  
4 Q: Give me an example of where a woman's  
5 word was believed over a man's at Absolute.  
6 MR. SULLIVAN: Objection to form.  
7 THE WITNESS: You're -- you're -- I  
8 mean, you're asking me for -- to -- to come  
9 up with specific examples from five years  
10 ago about conversations --  
11 BY MR. THOMAS:  
12 Q: Any specific example.  
13 A: I don't --  
14 Q: One.  
15 A: I -- I just don't -- I just can't  
16 think of anything right now.  
17 Q: Okay. Now -- and you're head of HR,  
18 so you know this is going on here, and you  
19 don't even think it's worthy of investigating  
20 why Todd Awtry, several months later, is  
21 trying to get Mary Piehler fired, even though  
22 he knew how the commissions were being done  
23 several months earlier?  
24 MR. SULLIVAN: Objection to form.  
25 THE WITNESS: So he has -- he has

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1 D. Berardo  
2 asked the questions not just for Mary, but  
3 'do we have enough grounds for termination  
4 for all three?'  
5 BY MR. THOMAS:  
6 Q: Okay. But Mary Piehler is one of  
7 them.  
8 A: Correct.  
9 Q: Right? Can we agree on that?  
10 A: Yeah. Yes, we can.  
11 Q: Okay. So -- and two months -- two or  
12 three months before, Todd Awtry said 'thanks  
13 for the heads-up.'  
14 A: He said 'thanks --'  
15 Q: So --  
16 A: '-- for the -- thanks for --'  
17 Q: -- [indiscernible] --  
18 A: '-- the heads-up.'  
19 Q: Let's just take that back. When he  
20 received that email, if he thought that what  
21 Mary Piehler was doing was wrong, it should  
22 have raised a red flag in your mind that he  
23 was setting her up for termination several  
24 months later.  
25 MR. SULLIVAN: Objection to form.

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1 D. Berardo  
2 THE WITNESS: I don't have -- know  
3 how one equals the other. I think it was  
4 determined --  
5 BY MR. THOMAS:  
6 Q: So let's -- okay. [Indiscernible] --  
7 MR. SULLIVAN: Wait a minute.  
8 BY MR. THOMAS:  
9 Q: -- [indiscernible] --  
10 MR. SULLIVAN: Had you --  
11 BY MR. THOMAS:  
12 Q: -- [indiscernible] --  
13 MR. SULLIVAN: -- finished your --  
14 had you finished your answer?  
15 THE WITNESS: Yes.  
16 BY MR. THOMAS:  
17 Q: Well, if you don't understand the --  
18 if you don't understand the question, let me  
19 -- let me rephrase it.  
20 MR. SULLIVAN: I don't think he said  
21 he didn't understand it. He just hadn't  
22 finished answering.  
23 MR. THOMAS: Can the court reporter  
24 read back his answer.  
25 MR. SULLIVAN: The portion before you

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1 D. Berardo  
2 cut him off?  
3 MR. THOMAS: Yeah.  
4 MR. SULLIVAN: Okay.  
5 THE COURT REPORTER: I actually  
6 didn't get it because of the interruptions.  
7 BY MR. THOMAS:  
8 Q: So let me tell you how one equals the  
9 other here. Mary Piehler sent this email to  
10 Todd Awtry in March. If Todd Awtry thought  
11 this was -- this commission system was grounds  
12 for termination, what he was doing was setting  
13 her up and waiting until several months later  
14 and then saying 'I think we have grounds to  
15 fire all three,' would that concern you?  
16 MR. SULLIVAN: Objection to form.  
17 THE WITNESS: I -- I just don't agree  
18 with your assessment, so...  
19 BY MR. THOMAS:  
20 Q: Okay. And you don't agree with my  
21 assessment, because it appears as though Todd  
22 is saying it's fine; this commission system is  
23 fine. Right?  
24 MR. SULLIVAN: Objection to form.  
25 THE WITNESS: He says 'thanks for

Page 211

1 D. Berardo  
2 heads-up.'  
3 BY MR. THOMAS:  
4 Q: What -- what -- what is he doing  
5 there? Is he -- does he think the commission  
6 system is okay or not okay?  
7 MR. SULLIVAN: Objection to form.  
8 THE WITNESS: I don't know.  
9 BY MR. THOMAS:  
10 Q: Okay. Is that something you should  
11 have looked at, given the fact that he tried  
12 to fire the employee two months later?  
13 MR. SULLIVAN: Objection to form.  
14 THE WITNESS: From my recollection,  
15 the reason why this didn't move forward and  
16 was ambiguous was because of this email,  
17 so...  
18 BY MR. THOMAS:  
19 Q: So why didn't you look at what Todd  
20 Awtry -- what Todd Awtry was up to?  
21 MR. SULLIVAN: Objection to form.  
22 THE WITNESS: There were -- there  
23 were -- I -- I didn't -- I didn't have any  
24 concerns. I mean...  
25 BY MR. THOMAS:

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1 D. Berardo  
2 Q: You don't have any concerns when an  
3 employee -- when a manager is trying to fire  
4 an employee when he shouldn't, and he knows  
5 that -- he knows that he's not telling -- that  
6 the employee is doing things correctly?  
7 MR. SULLIVAN: Objection to form.  
8 BY MR. THOMAS:  
9 Q: That doesn't concern you?  
10 MR. SULLIVAN: Objection to form.  
11 THE WITNESS: Well -- well, that's  
12 why we had this investigation. Because the  
13 company investigated, and then it was  
14 determined, because of this email, that the  
15 allegation -- or the -- how the -- the  
16 businesses were booked, it was -- it was  
17 ambiguous, because this email that Mary had  
18 sent to Todd that said 'thanks for  
19 heads-up.'  
20 BY MR. THOMAS:  
21 Q: And you didn't bother -- it didn't  
22 concern you at all to investigate what was --  
23 what Todd was up to?  
24 MR. SULLIVAN: Objection to form.  
25 THE WITNESS: Well, I -- I -- from



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1 D. Berardo  
2 what I recall, Todd -- Todd forgot --  
3 forgot about this email.  
4 BY MR. THOMAS:  
5 Q: Well, forgot? Or did you investigate  
6 whether he truly forgot? Or did you look at  
7 it at all? Or did you just say, 'oh,  
8 whatever.'  
9 A: How would we --  
10 Q: 'A man is trying -- I hear a man is  
11 trying to fire a woman at Absolute. That --  
12 we didn't fire her, so we're not even going to  
13 bother looking into what the man is doing.'  
14 A: So --  
15 MR. SULLIVAN: Objection to form.  
16 THE WITNESS: -- just -- just to  
17 clarify again, he was asking for  
18 termination of all three, and there's --  
19 BY MR. THOMAS:  
20 Q: Okay. But [indiscernible] --  
21 A: -- two men --  
22 Q: -- about Mary --  
23 A: There's two men and one woman, so --  
24 Q: M'mm-hmm?  
25 A: -- so I -- no, I mean, the -- the

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1 D. Berardo  
2 connection -- I mean, I didn't --  
3 Q: You didn't draw that?  
4 A: I didn't draw that --  
5 Q: You, as head of -- you, as head of  
6 HR, didn't draw the connection?  
7 A: I -- I -- no, I didn't draw the  
8 connection, and I -- and I still wouldn't draw  
9 it today.  
10 Q: You didn't draw the connection even  
11 after Ms. Piehler said that Todd Awtry was out  
12 to get her, didn't you?  
13 MR. SULLIVAN: Objection to form.  
14 THE WITNESS: Out to get her?  
15 BY MR. THOMAS:  
16 Q: Yeah.  
17 A: I -- I don't recall her saying that.  
18 I mean, maybe she -- she did. I don't...  
19 Q: And you didn't investigate her  
20 complaints about Todd Awtry saying that she  
21 was stealing and lying falsely? You didn't  
22 even bother to look at that?  
23 MR. SULLIVAN: Objection to form.  
24 THE WITNESS: This whole  
25 investigation was around that.

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1 D. Berardo  
2 BY MR. THOMAS:  
3 Q: Okay. And what did you do to counsel  
4 Todd Awtry about his conduct in this  
5 situation?  
6 MR. SULLIVAN: Objection to form.  
7 THE WITNESS: I mean, I'm -- I'm --  
8 so I'm -- I'm certain that there were  
9 conversations with Todd. I -- I don't  
10 recall specifically what was said to him.  
11 BY MR. THOMAS:  
12 Q: Did they include saying to him that  
13 he should not be treating his female  
14 subordinates the way he had been?  
15 A: No.  
16 MR. SULLIVAN: Objection to form.  
17 THE WITNESS: No, there was no  
18 conversations.  
19 UNIDENTIFIED SPEAKER: Can we just  
20 [indiscernible] --  
21 BY MR. THOMAS:  
22 Q: Sorry, go ahead.  
23 A: There was no conversations of that  
24 nature.  
25 Q: Because that was not something you

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1 D. Berardo  
2 even investigated, was it?  
3 MR. SULLIVAN: Objection to form.  
4 THE WITNESS: That he was  
5 discriminating against Mary because of her  
6 gender?  
7 BY MR. THOMAS:  
8 Q: Correct.  
9 A: It was not something we investigated  
10 because it was not something that we thought  
11 was relevant in the situation.  
12 Q: It never crossed your mind, never  
13 raised a red flag; right?  
14 MR. SULLIVAN: Objection to form.  
15 THE WITNESS: No, there -- there were  
16 three people involved in this situation,  
17 and two were male.  
18 BY MR. THOMAS:  
19 Q: Oh, so that means that that -- it  
20 couldn't be discrimination against Mary  
21 Piehler because of her gender?  
22 MR. SULLIVAN: Objection to form.  
23 THE WITNESS: Well, I mean, no, I'm  
24 not saying that, but I'm -- I'm saying that  
25 there -- there was -- there would be no red

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1 D. Berardo  
 2 flags in my head that this was because of  
 3 her gender. That's what I'm telling you.  
 4 BY MR. THOMAS:  
 5 Q: Even when she complained about it, it  
 6 raised no red flags?  
 7 A: Complained that she was discriminated  
 8 on because of her gender? Is that what you're  
 9 asking me?  
 10 Q: We'll -- we'll come back to that.  
 11 A: Okay.  
 12 MR. THOMAS: Let's go to -- if the  
 13 court reporter could show the witness  
 14 Exhibit Awtry 76.  
 15 THE WITNESS: Okay.  
 16 BY MR. THOMAS:  
 17 Q: Just to get the timeline straight  
 18 here, on June 26th, Todd Awtry is saying that  
 19 he believes there's enough grounds to  
 20 terminate Mary Piehler. Ultimately, she's not  
 21 terminated because there -- she didn't do  
 22 anything wrong. And then on July 2nd, what  
 23 does she want to -- what does he want to do to  
 24 Mary Piehler?  
 25 A: So from reading this email, he wants

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1 D. Berardo  
 2 to put her on a performance improvement plan  
 3 because of her Manage and Service numbers.  
 4 Q: So within five days of not being able  
 5 to fire her, he then switches reasons and  
 6 wants to put her on a PIP for something else;  
 7 right?  
 8 MR. SULLIVAN: Objection to form.  
 9 THE WITNESS: That's correct.  
 10 BY MR. THOMAS:  
 11 Q: And what do you tell him?  
 12 A: So I -- I asked him -- I asked him  
 13 about:  
 14 Would we be singling her out by  
 15 putting her on a PIP? We just came off an  
 16 investigation, so things are a little  
 17 sensitive. Are there any RDs in the same  
 18 boat?  
 19 Q: And were you the one who stopped the  
 20 PIP from going forward?  
 21 A: I mean, I don't recall specifically,  
 22 but, I mean, I -- you know, judging from this  
 23 email, it seems like, you know, I may have  
 24 advised against it. I -- I don't know what  
 25 the sequence of events were after this email

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1 D. Berardo  
 2 or what was back and forth after this specific  
 3 email.  
 4 Q: And just a few -- few moments ago,  
 5 you said you didn't think that Mary Piehler  
 6 was being treated differently because of her  
 7 gender, but --  
 8 A: Correct.  
 9 Q: -- in an email a week later, you say:  
 10 My only concern would be if we are  
 11 singling her out.'  
 12 So it did occur to you that you were -- that  
 13 Mary Piehler was being singled out, didn't it?  
 14 MR. SULLIVAN: Objection to form.  
 15 THE WITNESS: Singling -- yeah,  
 16 singled out compared to her peers, the  
 17 other regional directors.  
 18 BY MR. THOMAS:  
 19 Q: And did you conduct any investigation  
 20 as to whether Mary Piehler was being singled  
 21 out by Todd Awtry?  
 22 A: Well, I had -- I asked the question,  
 23 and he provided me the numbers.  
 24 Q: And then did you conduct any further  
 25 investigation as to -- I mean, would you be

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1 D. Berardo  
 2 concerned to find out that a manager was  
 3 singling out one of his subordinates?  
 4 A: Well, for performance, that wouldn't  
 5 concern me.  
 6 Q: Okay. But you, in this case,  
 7 indicated that the PIP shouldn't go forward;  
 8 correct?  
 9 A: I -- I don't think I indicated that.  
 10 I -- I asked the question.  
 11 Q: Okay. And so did you do anything  
 12 else to follow up on your question about  
 13 whether she was being singled out after you  
 14 got Todd's answer?  
 15 A: I don't -- I don't recall what  
 16 happened after Todd responded to me. I don't  
 17 remember.  
 18 Q: You don't remember doing any  
 19 investigation as to whether it was for  
 20 discrimination or other reasons; right?  
 21 A: No, there was -- there was no  
 22 discrimination brought to me, so I don't  
 23 recall any sort of investigations around  
 24 discrimination. Based on -- you know, based  
 25 on gender or -- or any protected grounds.

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1 D. Berardo  
2 This was about performance.  
3 Q: Well, when a -- when a manager is  
4 singling out  
5 a woman on his staff for a PIP and a  
6 termination for reasons that he had been  
7 informed were okay, it never -- it doesn't --  
8 that -- discrimination didn't cross your mind?  
9 That's the type of HR culture you were running  
10 there?  
11 MR. SULLIVAN: Objection to form.  
12 THE WITNESS: The -- the PIP was  
13 concerning her performance, so he may have  
14 been singling her -- her out based on her  
15 performance with her peers, and that  
16 happens all the time.  
17 BY MR. THOMAS:  
18 Q: You -- it didn't -- it didn't strike  
19 you as coincidental that, within a week of  
20 Todd failing to get Mary fired on the DOE  
21 issue, that he's coming back and trying to put  
22 her on a PIP for something else?  
23 MR. SULLIVAN: Objection to form.  
24 THE WITNESS: Well, I mean, the --  
25 the -- the new fiscal year starts in July

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1 D. Berardo  
2 of every year, I believe, from Absolute.  
3 So, I mean, it -- it -- it didn't -- it  
4 didn't concern me about any sort of  
5 protected discrimination.  
6 MR. THOMAS: Could you read --  
7 Jessica, could you read the question back  
8 to Mr. Berardo.  
9 (REPORTER READ BACK)  
10 MR. SULLIVAN: Objection to form.  
11 THE WITNESS: I -- I wouldn't say  
12 it's coincidental, but, obviously, I had a  
13 -- I had a concern, and I asked the  
14 question. So I had a concern enough that I  
15 asked the question about her performance.  
16 BY MR. THOMAS:  
17 Q: All right. Have you ever heard of an  
18 employee being put on a PIP for following a  
19 CEO's direction?  
20 MR. SULLIVAN: Objection to form.  
21 THE WITNESS: A: CEO's direction?  
22 BY MR. THOMAS:  
23 Q: Yes.  
24 A: I mean, not off the top of my head.  
25 Q: It would be kind of strange, wouldn't

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1 D. Berardo  
2 it?  
3 MR. SULLIVAN: Objection to form.  
4 THE WITNESS: To follow an order from  
5 a CEO, and then be put on a PIP because you  
6 followed that order?  
7 BY MR. THOMAS:  
8 Q: Yeah.  
9 A: I -- yeah, I would say that would be  
10 strange.  
11 Q: Are you aware that Geoff Haydon said  
12 that he wanted the company to focus on selling  
13 Computrace and only sell Manage and Service to  
14 current clients?  
15 MR. SULLIVAN: Objection to form.  
16 THE WITNESS: I mean, I don't -- I  
17 don't recall that, but...  
18 BY MR. THOMAS:  
19 Q: Do you have any reason to doubt that  
20 was true?  
21 A: No.  
22 Q: And what is Mr. Awtry faulting  
23 Ms. Piehler for here as to why she was -- why  
24 she was being singled out?  
25 A: Well, this was Manage and Service.

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1 D. Berardo  
2 MR. THOMAS: Now, let's -- if the  
3 court reporter could mark Exhibit Berardo  
4 L. And, Jessica, are you -- when I'm doing  
5 new exhibits that you have, are you going  
6 off numerically from where we left off at  
7 85?  
8 THE COURT REPORTER: Yes, if that's  
9 what you would like.  
10 MR. THOMAS: Perfect.  
11 THE COURT REPORTER: Okay.  
12 MR. THOMAS: Let's go off the record  
13 for a second.  
14 VIDEOGRAPHER: Going off record. The  
15 time is 4:23.  
16 (PROCEEDINGS RECESSED AT 4:23 P.M.)  
17 (PROCEEDINGS RECONVENED AT 4:25 P.M.)  
18 VIDEOGRAPHER: Back on the record.  
19 The time is 4:25.  
20 BY MR. THOMAS:  
21 Q: Mr. Berardo, you're free to read as  
22 much of Exhibit 86 as you would like.  
23 However, I'm only going to be really asking  
24 you about the forwarding emails from  
25 Mr. Awtry. So let me know when you're ready.

1 D. Berardo  
2 A: The -- sorry, the -- the from email  
3 from Mr. Awtry?  
4 Q: Yeah, where he says:  
5 I highlighted a few, but encourage  
6 you to read all of it.  
7 MS. LESTRADE: Oh. That is not  
8 exhibit -- what has been marked as  
9 Exhibit 86.  
10 MR. THOMAS: Okay. What is the Bates  
11 number at the bottom of that, Jessica?  
12 Let's -- let's go off the record.  
13 VIDEOGRAPHER: Going off record. The  
14 time is 4:26.  
15 (PROCEEDINGS RECESSED AT 4:26?P.M.)  
16 (PROCEEDINGS RECONVENED AT 4:38?P.M.)  
17 VIDEOGRAPHER: Back on the record.  
18 The time is 4:39.  
19 (Exhibit 86 was marked for  
20 identification and is attached hereto.)  
21 BY MR. THOMAS:  
22 Q: All right. Let me start again, Mr.  
23 Berardo. Sorry for that confusion there.  
24 You're welcome to read as much as Exhibit 86  
25 as you would like, which, for the record, is

1 D. Berardo  
2 Bates number DEFS08824 to DEFS08830. But I'm  
3 only going to really ask you about the very  
4 top of the first page, which is Todd sending  
5 you this email.  
6 So let me know when you're ready,  
7 and I can ask you questions.  
8 A: Sure. I don't -- I don't need to --  
9 unless you want me to read it all, I don't  
10 need to read it all, just because you --  
11 Q: No, I --  
12 A: I --  
13 Q: -- don't -- I don't need you to.  
14 A: Okay.  
15 Q: Okay. So, now, just for the -- for  
16 the sake of chronology, back at the end of  
17 June, very end of June, Todd Awtry says that  
18 he thinks he has grounds to fire Mary Piehler.  
19 HR gets involved. Mary Piehler is not fired.  
20 July 2nd, about a week later, he tries to put  
21 Mary Piehler on a PIP. Again, involves HR.  
22 And she is not put on a PIP. Then a month  
23 later in August, he is forwarding to you an  
24 email that Mary Piehler wrote -- oh, what was  
25 that? -- 15 months before and -- about Mary

1 D. Berardo  
2 Piehler's comments on Todd Awtry and -- and  
3 his job.  
4 Why was Todd Awtry forwarding you  
5 this email in August?  
6 MR. SULLIVAN: Objection to form.  
7 THE WITNESS: So, from what I recall,  
8 he was -- he was -- he was just made --  
9 made aware. He was made aware of this  
10 email.  
11 BY MR. THOMAS:  
12 Q: He was just made aware of that email?  
13 A: I mean, from my recollection, he was  
14 just --  
15 Q: I will testify to you that -- I will  
16 represent to you that his testimony was that  
17 he was aware of the email almost --  
18 A: Okay.  
19 Q: -- at the time it was -- it was sent,  
20 so --  
21 A: Okay. So -- so my recollection is  
22 incorrect. So -- so did he -- had he just  
23 received the email? Or he said that he's had  
24 this email for a long time?  
25 Q: He said that he had the email for a

1 D. Berardo  
2 long time.  
3 A: Okay. Fair enough. I -- I don't  
4 recall why he sent it to me on the 15th of  
5 August.  
6 Q: Was he still trying to get Mary  
7 fired?  
8 MR. SULLIVAN: Objection to form.  
9 THE WITNESS: I don't recall our  
10 conversations about this email.  
11 BY MR. THOMAS:  
12 Q: Or trying to put her in a bad light?  
13 MR. SULLIVAN: Objection to form.  
14 THE WITNESS: That -- that would be  
15 more of a question for Todd.  
16 BY MR. THOMAS:  
17 Q: It seems like every couple of weeks  
18 or months starting in June, he's on Mary  
19 Piehler's tail, singling her out to HR in  
20 various ways. Is that fair to say?  
21 MR. SULLIVAN: Objection to form.  
22 THE WITNESS: I wouldn't say singling  
23 out, no. That -- that wouldn't be  
24 accurate.  
25 BY MR. THOMAS:

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1 D. Berardo  
2 Q: Well -- well, I think that's the word  
3 that you used; right? 'Singling out'?  
4 A: Not in that context.  
5 Q: What context -- what context did you  
6 not use it -- I mean, what context did you use  
7 it in?  
8 A: If I -- if I can see the prior  
9 exhibit, then I can -- I can tell you exactly  
10 how I was...  
11 Q: Exhibit 70 -- we -- we don't need to  
12 do that. We -- we've been through that --  
13 A: Okay.  
14 Q: -- your use of the word -- I -- when  
15 I said 'singling,' I was only, you know, using  
16 your phrase.  
17 But why is -- as an HR person,  
18 aren't you a little concerned at this point  
19 that you've got a manager trying to -- trying  
20 to go after one of his employees again and  
21 again and again?  
22 MR. SULLIVAN: Objection to form.  
23 THE WITNESS: Are you asking me about  
24 this specific email? Or --  
25 BY MR. THOMAS:

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1 D. Berardo  
2 Q: This email with -- what was preceded  
3 by the PIP email that was preceded by the  
4 termination email. We had three -- three  
5 attempts in a row by Todd Awtry to -- to go  
6 after Mary Piehler in the space of a month and  
7 a half.  
8 MR. SULLIVAN: Objection to form.  
9 THE WITNESS: In my opinion, they  
10 were all valid concerns.  
11 BY MR. THOMAS:  
12 Q: Well, the DOE was not a valid  
13 concern, was it? She didn't do anything wrong  
14 there.  
15 A: So it was -- it was determined that  
16 it was inconclusive.  
17 Q: Okay. So that was not a valid  
18 concern, was it?  
19 MR. SULLIVAN: Objection to form.  
20 THE WITNESS: It was a valid concern  
21 -- when we did the investigation, it was,  
22 yes.  
23 BY MR. THOMAS:  
24 Q: Well, was it a valid concern for him  
25 who, two months before, knew how the

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1 D. Berardo  
2 commissions were being allocated?  
3 MR. SULLIVAN: Objection to form.  
4 THE WITNESS: If I can see -- I think  
5 we discussed this before, but if we could  
6 -- if we want to discuss it again, I -- if  
7 I can see the --  
8 BY MR. THOMAS:  
9 Q: Sure.  
10 A: -- prior exhibits.  
11 THE COURT REPORTER: Which number?  
12 BY MR. THOMAS:  
13 Q: I think we can all agree that as of  
14 -- if you take a look at Exhibit 71, as of  
15 March 17th, Todd Awtry was fully aware of how  
16 the commissions at the DOE were going to be  
17 allocated; correct?  
18 A: I don't have Exhibit 71 in front of  
19 me, sorry. Can we...  
20 Q: We'll get that for you.  
21 A: Thank you. Right. So this is where  
22 he said 'thanks for heads-up.'  
23 Q: Right. Where he was informed of how  
24 the commissions for DOE were being done;  
25 correct?

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1 D. Berardo  
2 A: Yeah, Mary -- yeah, Mary was -- was  
3 emailing him about that.  
4 Q: And, Mr. Berardo, I don't want to  
5 nitpick with you on all of these exhibits. I  
6 will just say to you you see all of this going  
7 on in the space of a month and a half, and it  
8 doesn't occur to you that Todd Awtry was out  
9 to get Mary Piehler?  
10 MR. SULLIVAN: Objection to form.  
11 THE WITNESS: That did not cross my  
12 mind because, again, these were all --  
13 BY MR. THOMAS:  
14 Q: As even a possibility?  
15 A: These were all legitimate --  
16 legitimate concerns that Todd had towards  
17 Mary.  
18 Q: Even as a possibility, it never  
19 crossed your mind?  
20 A: No.  
21 Q: Okay. Do you think that that is a  
22 common-sense perspective on the situation?  
23 MR. SULLIVAN: Objection to form.  
24 THE WITNESS: Yes.  
25 BY MR. THOMAS:

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1 D. Berardo  
2 Q: And not only is Todd out to get Mary  
3 in each of these situations, but they're all  
4 sort of different; right? Tries one; it  
5 doesn't work. Tries something else; it  
6 doesn't work. Tries something else; it  
7 doesn't work. Right?  
8 MR. SULLIVAN: Objection to form.  
9 THE WITNESS: No, I wouldn't  
10 characterize it like that.  
11 BY MR. THOMAS:  
12 Q: Okay. And you didn't investigate to  
13 see how it should be characterized, did you?  
14 MR. SULLIVAN: Objection to form.  
15 THE WITNESS: Investigate what?  
16 BY MR. THOMAS:  
17 Q: How Todd Awtry was going after Mary  
18 Piehler?  
19 A: There was --  
20 MR. SULLIVAN: Objection to form.  
21 THE WITNESS: There was nothing to  
22 investigate.  
23 BY MR. THOMAS:  
24 Q: And when you saw the email from Mary  
25 Piehler with Jermaine O'Dondow [phonetic] down

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1 D. Berardo  
2 below, you didn't recommend Ms. Piehler's  
3 termination, did you?  
4 A: I don't -- I don't recall what --  
5 what was discussed.  
6 Q: Do you -- do you recall any  
7 discussions that she should be disciplined?  
8 A: I don't -- I don't recall our  
9 discussions, no.  
10 Q: Okay. And you don't recall any  
11 discussions that she should be counselled?  
12 A: No, I don't recall any discussions.  
13 Q: Or terminated?  
14 A: I mean, I just don't remember if we  
15 had those conversations. I don't know.  
16 Q: All right. Let's go to Exhibit 21,  
17 if that could be marked.  
18 MR. SULLIVAN: Shouldn't need to mark  
19 it. It's already been marked.  
20 THE COURT REPORTER: So, sorry, am I  
21 marking it 87?  
22 MR. SULLIVAN: No, it's already been  
23 marked as 21.  
24 THE WITNESS: Thank you.  
25 BY MR. THOMAS:

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1 D. Berardo  
2 Q: Why don't you read it over, and when  
3 you've had a chance, I will have some  
4 questions for you on it.  
5 A: Oh, this was in order, actually, from  
6 front to back. I read the last -- I will  
7 start at the beginning. Okay.  
8 Q: All right. Did you take any steps to  
9 probe the complaints made by Mary Piehler in  
10 this exhibit?  
11 MR. SULLIVAN: Objection to form.  
12 THE WITNESS: I can't recall  
13 specifically, but -- but reading through  
14 it, it's -- the numbers -- I mean, the  
15 numbers seemed like they were system  
16 issues, so I likely wouldn't have  
17 investigated that.  
18 MR. THOMAS: I will request any  
19 documentation -- any HR review that was  
20 performed of this --  
21 THE WITNESS: Not --  
22 MR. THOMAS: -- exhibit.  
23 BY MR. THOMAS:  
24 Q: I will just give one example.  
25 A: Not to my recollection.

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1 D. Berardo  
2 Q: In the second line, she says:  
3 I don't want to be known as a  
4 troublemaker.'  
5 Right?  
6 A: Okay.  
7 Q: Third line, she says she wants to be  
8 paid -- paid fairly. At the bottom paragraph,  
9 she refers to a man who's getting paid full  
10 value, and she isn't getting commissions and  
11 under investigation for selling DOE. Do you  
12 see those comments?  
13 A: I do, yes.  
14 Q: Okay. Did you see them at the -- did  
15 you read them at the time?  
16 A: I would have, yes.  
17 Q: Is this an example of you thinking  
18 that Mary Piehler was passionate or difficult  
19 to deal with?  
20 MR. SULLIVAN: Objection to form.  
21 THE WITNESS: I mean, I don't -- I  
22 don't recall what I thought when I received  
23 the email. I don't remember.  
24 BY MR. THOMAS:  
25 Q: Didn't you make a comment like that

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1 D. Berardo  
2 earlier today? That you thought that Mary  
3 could be passionate in her communication?  
4 A: I don't -- I don't recall. We can  
5 definitely read back what I -- what I wrote  
6 [sic], if you like.  
7 Q: Well, do you think she -- do you  
8 think she was passionate in her -- in her  
9 communications?  
10 A: Was she -- was she passionate? I  
11 mean, she didn't shy away from communicating.  
12 Q: Did you -- you talked before about  
13 how you had conversations with her, and they  
14 would end up going round and round. Do you  
15 remember that?  
16 A: They would go around in circles  
17 sometimes, yes.  
18 Q: Is this an example of it going around  
19 in circles?  
20 A: Well, I don't -- I don't think so.  
21 It's one -- it's a -- one email to me. So I  
22 can't recall if I went around and around with  
23 her.  
24 Q: Okay. Turning to the last page, do  
25 you see that under number 4, about seven lines

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1 D. Berardo  
2 down, she says:  
3 All I asked was to be treated the  
4 same.'  
5 Do you see that?  
6 A: Can you -- so it's, sorry, the  
7 second-to-last page?  
8 Q: Second-to-last page. P818, item  
9 number 4. Six, seven lines down:  
10 All I asked was to be treated the  
11 same.'  
12 Do you see that?  
13 A: All I asked was to be treated the  
14 same.'  
15 Yeah.  
16 Q: Was that an unfair request from a  
17 woman at Absolute?  
18 MR. SULLIVAN: Objection to form.  
19 THE WITNESS: Yeah, I would say  
20 it's a -- no, it's a fair request from  
21 anyone at Absolute.  
22 BY MR. THOMAS:  
23 Q: Is it a fair request from someone at  
24 Absolute that they want to be -- from a woman  
25 at Absolute, that she wants to be paid fairly?

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1 D. Berardo  
2 MR. SULLIVAN: Objection to form.  
3 THE WITNESS: I -- I don't think  
4 that -- again, from -- from anyone that --  
5 anyone, it would be valid to say they want  
6 to be paid fairly.  
7 BY MR. THOMAS:  
8 Q: And if they take that to HR, that's  
9 something that HR should look at; right?  
10 MR. SULLIVAN: Objection to form.  
11 THE WITNESS: If they say that they  
12 were paid unfairly because they were  
13 female? Or because of gender? Is that  
14 what you're asking me?  
15 BY MR. THOMAS:  
16 Q: Well, I'm asking -- let's just start  
17 with someone who says 'I'm not being paid  
18 fairly' and goes to HR. Should HR look at  
19 that?  
20 A: We -- it happens all the time, and  
21 people's perception of being paid fairly, it's  
22 just --  
23 Q: I'm asking whether HR should look at  
24 that issue.  
25 A: We should talk to the employee and

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1 D. Berardo  
2 ask what the employee may be speaking of.  
3 MR. THOMAS: Going to page -- we --  
4 and we will request documentation of that  
5 ever occurring.  
6 BY MR. THOMAS:  
7 Q: Going to page P817, do you remember  
8 that Todd Awtry shared the performance reviews  
9 of his subordinates with all of his  
10 subordinates --  
11 A: Yes.  
12 Q: -- by email?  
13 A: I do remember that.  
14 MR. SULLIVAN: Objection to form.  
15 BY MR. THOMAS:  
16 Q: Is that an example of him in his  
17 professional, buttoned-up attitude that he was  
18 bringing to Absolute?  
19 A: I would say that's not an -- not an  
20 example of that.  
21 Q: Did you see that Mary Piehler  
22 complained about him doing that?  
23 A: Did she -- sorry, in this thread,  
24 she -- did she complain to me about it, sorry?  
25 Q: P817.

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1 D. Berardo  
2 A: 17. So, sorry, because there's -- it  
3 -- it doesn't show who this was sent to on my  
4 copy.  
5 Q: Okay. If you go to the top of page  
6 P811, who is dberardo@absolute.com?  
7 A: So you're asking me who  
8 dberardo@absolute.com is?  
9 Q: M'mm-hmm.  
10 A: That's me.  
11 Q: Okay. And do you see in the first  
12 line where it says 'Daniel'?  
13 A: Yes. No, there was a -- there's a  
14 whole bunch of --  
15 Q: Okay. So I'm ask -- so would you go  
16 to page 817. Do you see in there where she  
17 tells you that -- that these emails were sent  
18 out to everybody in her group?  
19 A: Yeah, and I recall -- I recall this.  
20 Q: Okay. And in the paragraph above,  
21 she mentions the fact that a manager who was  
22 there less than six months, Troy, a male, is  
23 able to get a higher performance rating, and  
24 his commentary is the same as hers, which is  
25 'I have not had a chance to observe the

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1 D. Berardo  
2 competency.' That's what Todd Awtry said.  
3 Did you look into that, as to why a male could  
4 -- could -- with less than six months'  
5 experience get a higher score on a  
6 performance --  
7 MR. SULLIVAN: Objection to form.  
8 BY MR. THOMAS:  
9 Q: -- review than Mary Piehler when Todd  
10 Awtry said he didn't have any basis to do the  
11 review?  
12 MR. SULLIVAN: Objection to form.  
13 THE WITNESS: I don't -- I don't  
14 recall -- I don't recall looking into  
15 specific performance reviews.  
16 MR. THOMAS: We would request the  
17 production of any documents reflecting any  
18 HR review of those issues.  
19 BY MR. THOMAS:  
20 Q: Now, Mr. Berardo, what -- what --  
21 well, let's do this: Let's just go off the  
22 record for five minutes here. Thanks.  
23 VIDEOGRAPHER: Going off record. The  
24 time is 5:04. This is the end of media 1.  
25 (PROCEEDINGS RECESSED AT 5:04P.M.)

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1 D. Berardo  
2 (PROCEEDINGS RECONVENED AT 5:13 P.M.)  
3 VIDEOGRAPHER: Back on the record.  
4 The time is 5:13.  
5 BY MR. THOMAS:  
6 Q: All right, Mr. Berardo. Thank you  
7 for that break there. Would it be fair to say  
8 that at Absolute when women complained about  
9 how they were being treated, that their  
10 complaints just kind of disappeared?  
11 MR. SULLIVAN: Objection to form.  
12 THE WITNESS: It would not be fair to  
13 say.  
14 BY MR. THOMAS:  
15 Q: Kind of ignored?  
16 A: No.  
17 Q: Well, let's -- let's take a look  
18 here, if we could.  
19 And if the court reporter could show  
20 Mr. Berardo Piehler Exhibit 22. You can read  
21 as much of it as you want. I -- why don't --  
22 yeah, why don't you go ahead and read the  
23 whole thing, and let me know when you're done.  
24 I'm not going to be going over the jellybean  
25 stuff at the end, but you can read whatever --

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1 D. Berardo  
2 as much as -- as much as you would like.  
3 A: Okay.  
4 Q: All right. I would like to direct  
5 your attention to DEFS2550 and the very top  
6 email from you.  
7 A: M'mm-hmm.  
8 Q: You say:  
9 Thanks, Mary. I don't recall ever  
10 having a conversation about your  
11 performance reviews with Todd. In fact, I  
12 don't even recall a conversation with you  
13 about not receiving your last performance  
14 review. Of course, I've had a lot of  
15 conversations, so I can't say for certain.  
16 My memory has failed me in the past. It's  
17 not my practice to discuss private  
18 conversations, though, so I apologize if  
19 this did happen.'  
20 Do you see your comment there?  
21 A: I do see my comment, yes.  
22 Q: And what date was that?  
23 A: It looks like it's August 11th, 2014.  
24 Q: How long before that had Mary Piehler  
25 complained about the evaluations with Todd?



1 D. Berardo  
2 A: The -- him sending out the -- the  
3 numbers?  
4 Q: If you look at Exhibit 21, I think it  
5 will refresh your recollection.  
6 A: It was July 6th, 2014.  
7 Q: So how -- how -- how long between the  
8 two -- between the two emails?  
9 A: So July 6th, 2014, and August 6th,  
10 2014. Or August 11th. So just over a month.  
11 Q: Okay. So, like, a month and five  
12 days. You totally forgot about Mary -- Mary  
13 Piehler's complaints about how her manager was  
14 evaluating her; correct?  
15 MR. SULLIVAN: Objection to form.  
16 THE WITNESS: I say:  
17 In fact, I don't even recall a  
18 conversation with you about not receiving  
19 your last performance review.'  
20 BY MR. THOMAS:  
21 Q: If you go to Exhibit 21, page P817,  
22 Ms. Piehler says, at the second paragraph:  
23 However, what I questioned even more  
24 was that I still have never had a  
25 performance review with Todd? Not to

1 D. Berardo  
2 mention, I do find it unprofessional that  
3 he shares these ratings with an email  
4 distribution list.'  
5 A: Okay.  
6 Q: So within the space of a month, you  
7 thought that you had forgotten about Mary  
8 Piehler's complaint about how Todd was  
9 treating her in terms of her performance  
10 evaluations. Fair to say?  
11 A: No. I said:  
12 In fact, I don't recall a  
13 conversation with you about receiving your  
14 last performance review.'  
15 Q: Oh, but you meant you did remember an  
16 email, but you didn't remember a conversation?  
17 A: I -- I don't recall what I -- I  
18 don't -- I don't recall what I remember or  
19 don't remember back then. I'm just going --  
20 Q: Okay.  
21 A: -- by what's --  
22 Q: Well, let's look --  
23 A: -- in the email.  
24 Q: -- at what you said. Do you consider  
25 it truthful and transparent to say to someone

1 D. Berardo  
2 'I don't remember a conversation with you'  
3 when -- when you're referring to an email they  
4 sent you complaining about discrimination?  
5 MR. SULLIVAN: Objection to form.  
6 THE WITNESS: So the email that she  
7 sent to me was not complaining about  
8 discrimination, and I said, 'I -- I don't  
9 even recall -- I don't recall the  
10 conversation with you.' So I think --  
11 BY MR. THOMAS:  
12 Q: So you had forgotten about it within  
13 a month?  
14 MR. SULLIVAN: Objection to form.  
15 THE WITNESS: I mean, we're talking  
16 about a conversation, so I'm not sure -- I  
17 have to read this email over again to see  
18 if Mary's --  
19 BY MR. THOMAS:  
20 Q: Sure.  
21 A: -- referring --  
22 Q: Read it again.  
23 A: -- referring to a conversation or the  
24 email she sent me.  
25 Q: I don't want us to keep going around

1 D. Berardo  
2 and around about this, Mr. Berardo. I think  
3 it's important that we get to the point.  
4 A: Sure. Absolutely.  
5 So, I mean, just reading from the emails,  
6 it -- it might be possible that I didn't  
7 remember this one line from this nine-page  
8 email a month and a half ago.  
9 Q: Well, let's -- let's count the lines  
10 of that. Let's go to P817. It actually  
11 starts on page 816, number 3, 'manager  
12 performance reviews.' Bold, highlighted. 1,  
13 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14,  
14 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25,  
15 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36,  
16 37, 38, 39, 40, 41, 42, 43, 44 -- 46, 47, 48,  
17 49, 50. Really, 50 lines in that email;  
18 right? About it?  
19 MR. SULLIVAN: Objection to form. 50  
20 lines -- I'm sorry. 50 lines in the  
21 entire --  
22 MS. LESTRADE: Nine-page email?  
23 MR. SULLIVAN: -- the nine-page  
24 document, Exhibit 21?  
25 MR. THOMAS: In Exhibit 21, yes.

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1 D. Berardo  
2 MR. SULLIVAN: Are you --  
3 MR. THOMAS: [Indiscernible] --  
4 MR. SULLIVAN: -- representing that  
5 Exhibit 21 is 50 lines?  
6 MR. THOMAS: No, I'm representing  
7 that there's 50 lines of discussion  
8 relating to the performance evaluation.  
9 MR. SULLIVAN: Okay. So --  
10 MR. THOMAS: I'm not representing  
11 anything. I'm asking -- if he doesn't  
12 think there's 50 lines there, he can let me  
13 know. But I don't -- he -- he testified  
14 under oath that there was 1.  
15 MR. SULLIVAN: I'm -- I'm just  
16 confused. 50 lines of what? Just so we're  
17 clear on that.  
18 MR. THOMAS: Discussion about his --  
19 the performance evaluation. Three  
20 managers' performance reviews. It deals  
21 with two issues: Not receiving a  
22 performance evaluation --  
23 MS. LESTRADE: Two issues.  
24 MR. THOMAS: -- and two then being  
25 emails sent out to everybody in the

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1 D. Berardo  
2 company.  
3 THE WITNESS: Okay. Well, I was  
4 referring to this line:  
5 However, what I questioned even more  
6 was that I still never had a performance  
7 review with Todd.'  
8 BY MR. THOMAS:  
9 Q: Well, let's go back. What about the  
10 first line:  
11 I emailed Tina on December 30th to  
12 see if there was ever a review done for me  
13 by Todd. Her email --'  
14 A: Okay.  
15 Q.'-- exchange is below.'  
16 A: Okay.  
17 Q.'Have you ever seen the review he  
18 wrote for me? I attached the PDF. Todd  
19 wrote one sentence for each category. 'I  
20 only had six months' visibility to observe  
21 this competency.'  
22 I won't keep reading it, but it's fair to say  
23 that her complaint didn't -- wasn't 1 line;  
24 correct?  
25 A. Okay. It was more than 1 line.

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1 D. Berardo  
2 Q: And more like 50. In an entire  
3 section of the email.  
4 A: I don't know if the -- this email  
5 here you're referring to that I wrote talked  
6 about not receiving her performance review.  
7 So I don't think that all 50 lines --  
8 Q: Well, go read -- go read what you  
9 said -- go read your own words from it.  
10 A.'In fact, I don't even recall a  
11 conversation with you about not receiving  
12 your last performance review.'  
13 Q: Yeah. Now, is it because you ignored  
14 her complaint or you just forgot about it that  
15 you didn't remember it a month later?  
16 MR. SULLIVAN: Objection to form.  
17 THE WITNESS: I -- I don't recall. I  
18 don't recall why.  
19 BY MR. THOMAS:  
20 Q: Is it because you didn't --  
21 obviously, you weren't investigating it.  
22 MR. SULLIVAN: Objection to form.  
23 THE WITNESS: Investigating that she  
24 didn't receive a review?  
25 BY MR. THOMAS:

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1 D. Berardo  
2 Q: That she didn't receive a performance  
3 review and that her manager emailed out the  
4 reviews to other people.  
5 MR. SULLIVAN: Objection to form.  
6 THE WITNESS: So those are two  
7 separate issues.  
8 BY MR. THOMAS:  
9 Q: As well as her comment that all she  
10 wanted to do was be treated fairly.  
11 MR. SULLIVAN: Objection to form.  
12 THE WITNESS: If -- if you want to go  
13 through -- I'm happy to go through each  
14 issue one by one, but they're separate  
15 issues.  
16 BY MR. THOMAS:  
17 Q: Well, I'm just wondering if you had  
18 any -- you had obviously forgotten about the  
19 performance review issue -- well, strike that.  
20 Had you forgotten about the  
21 performance review about a month later, or did  
22 you just ignore it when it first came in?  
23 MR. SULLIVAN: Objection to form.  
24 THE WITNESS: I have already answered  
25 that question, but I don't recall.

1 D. Berardo  
 2 BY MR. THOMAS:  
 3 Q: Okay. It's possible you could have  
 4 ignored it; it's possible you just forgot it?  
 5 MR. SULLIVAN: Objection to form.  
 6 THE WITNESS: That's your opinion.  
 7 BY MR. THOMAS:  
 8 Q: No, I'm asking you for your -- for  
 9 what you mean by 'I don't -- it -- it could  
 10 be.' What --  
 11 MR. SULLIVAN: Objection --  
 12 BY MR. THOMAS:  
 13 Q: -- [indiscernible] --  
 14 MR. SULLIVAN: -- to form.  
 15 THE WITNESS: I didn't say it could  
 16 be. I said I don't --  
 17 BY MR. THOMAS:  
 18 Q: Okay. Well, what -- did -- did you  
 19 forget it?  
 20 A: No, I said I don't recall.  
 21 Q: Or did you just never read it to  
 22 begin with?  
 23 MR. SULLIVAN: Objection to form.  
 24 THE WITNESS: I don't recall. I  
 25 don't have a recollection of it.

1 D. Berardo  
 2 BY MR. THOMAS:  
 3 Q: Okay. It could be either of those?  
 4 MR. SULLIVAN: Objection to form.  
 5 THE WITNESS: I don't have a  
 6 recollection of it, so I can't answer that  
 7 question.  
 8 BY MR. THOMAS:  
 9 Q: Okay. Well, I'm asking you could it  
 10 be anything else besides those two, that you  
 11 never read it, or you forgot about it?  
 12 MR. SULLIVAN: Objection to form.  
 13 THE WITNESS: I mean, yeah, I could  
 14 have forgotten about it. I -- I mean, I --  
 15 I doubt that I wouldn't have read it. But  
 16 I may have forgotten that I had -- didn't  
 17 read these two sentences in this nine-page  
 18 email.  
 19 BY MR. THOMAS:  
 20 Q: Okay. And you -- do you understand  
 21 why -- well, let's -- let's go to Mary  
 22 Piehler's comment on Exhibit 22 where she  
 23 says, in the email to you at the end of the  
 24 second paragraph (as read):  
 25 What I want to stop is Todd being

1 D. Berardo  
 2 asked about something, denying it, and then  
 3 someone thinking I did not tell the truth  
 4 when, in -- when, in reality, it is true  
 5 and documented. I would not tell HR or an  
 6 ELT member anything I could not  
 7 substantiate.'  
 8 Do you see that?  
 9 A: I see that, yes.  
 10 Q: Do you think Mary Piehler could have  
 11 felt that when she was communicating with you  
 12 it just ended up that your -- her complaints  
 13 to you were ignored, and that it just went  
 14 around and around, and you would forget  
 15 things, and you wouldn't pay attention to what  
 16 was going on, and she just -- it was very  
 17 difficult communicating with you?  
 18 A: Absolutely --  
 19 MR. SULLIVAN: Objection to form.  
 20 THE WITNESS: Absolutely not. We  
 21 talked on a number of occasions.  
 22 BY MR. THOMAS:  
 23 Q: Okay. But, well, she raises a major  
 24 concern with you about how her male superior  
 25 is conducting her performance appraisals, the

1 D. Berardo  
 2 same one who has just tried to put her on a  
 3 PIP, fire her, and forwarded you an email  
 4 about [lost connection] somebody thinks  
 5 warrants termination, and you can't even  
 6 remember what she said to you a month ago in  
 7 an email?  
 8 MR. SULLIVAN: Objection to form.  
 9 BY MR. THOMAS:  
 10 Q: Wouldn't that be a concern if you  
 11 were an employee?  
 12 MR. SULLIVAN: Objection to form.  
 13 THE WITNESS: No, we're human.  
 14 BY MR. THOMAS:  
 15 Q: Well, you say -- let's go to  
 16 Exhibit 17. Your email on July 1st on page  
 17 DEFS02585 says:  
 18 Coming from an HR background, it's  
 19 always been drilled in my head to get  
 20 everything in writing.'  
 21 A: Where are we? Sorry, where are we?  
 22 Q: Exhibit 17, DEFS02585.  
 23 A: 585. Okay.  
 24 Q: And you see you said to Mary Piehler:  
 25 Coming from an HR background, it has

1 D. Berardo  
 2 always been drilled in my head to get  
 3 everything in writing.'  
 4 Do you see that?  
 5 A: Yes.  
 6 Q: And Mary Piehler put it in writing,  
 7 and it was forgotten or ignored --  
 8 A: Mary --  
 9 Q: -- by HR?  
 10 MR. SULLIVAN: Objection to form.  
 11 THE WITNESS: That she didn't --  
 12 BY MR. THOMAS:  
 13 Q: Right?  
 14 A: That she didn't receive a performance  
 15 review? I can't --  
 16 Q: Her complaint was ignored or  
 17 forgotten; right?  
 18 MR. SULLIVAN: Objection to form.  
 19 BY MR. THOMAS:  
 20 Q: Even though she put it in writing?  
 21 A: I can't say what happened after that  
 22 email or if I had conversations with her. We  
 23 had many conversations on the phone.  
 24 Q: And what good did it do her to put it  
 25 in writing to HR?

1 D. Berardo  
 2 MR. SULLIVAN: Objection to form.  
 3 THE WITNESS: Are you asking me what  
 4 she thought?  
 5 BY MR. THOMAS:  
 6 Q: Yeah. What good did it do? It was  
 7 forgotten in a month.  
 8 MR. SULLIVAN: Objection to form.  
 9 BY MR. THOMAS:  
 10 Q: Or ignored.  
 11 A: Okay.  
 12 Q: What good did it do for her to put it  
 13 in writing?  
 14 MR. SULLIVAN: Objection to form.  
 15 THE WITNESS: I -- I don't know -- I  
 16 don't know how to answer that question.  
 17 BY MR. THOMAS:  
 18 Q: No. All right. Let's move on.  
 19 What investigations did you do in HR  
 20 to ensure that Mary Piehler was being treated  
 21 fairly by the company?  
 22 A: Are you talking about a specific  
 23 incident?  
 24 Q: Anything you have done.  
 25 A: We have gone through --

1 D. Berardo  
 2 Q: Anything where you list it.  
 3 A: We have gone through a number of  
 4 scenarios.  
 5 Q: You didn't list -- tell me one right  
 6 now where you listed a finger to help Mary  
 7 Piehler from being treated unfairly at  
 8 Absolute.  
 9 A: We did the --  
 10 MR. SULLIVAN: Objection to form.  
 11 THE WITNESS: We did a DOE -- DOE  
 12 investigation.  
 13 BY MR. THOMAS:  
 14 Q: That was protecting her?  
 15 A: It absolutely was, yes.  
 16 Q: Or was she the one -- she -- wasn't  
 17 she the target of the investigation?  
 18 A: She was a subject -- she was one of  
 19 the three subjects of the investigation, from  
 20 what I recall.  
 21 Q: So being a subject of an  
 22 investigation is an example of you ensuring  
 23 that she was treated fairly?  
 24 A: Absolutely, it is.  
 25 Q: And her being withheld commissions

1 D. Berardo  
 2 during that investigation is an example of her  
 3 being treated fairly?  
 4 MR. SULLIVAN: Objection to form.  
 5 THE WITNESS: That's -- that wasn't  
 6 my call, so I can't really answer that  
 7 question.  
 8 BY MR. THOMAS:  
 9 Q: As an HR, though -- as an HR -- as  
 10 head of HR, withholding someone's pay during  
 11 an investigation, you think, is a way to  
 12 ensure they're being treated fairly?  
 13 A: We -- we didn't withhold pay; we  
 14 withheld commissions while the investigation  
 15 was underway, so --  
 16 Q: What's the difference between --  
 17 sorry. Go ahead.  
 18 A: So I would think that that would be  
 19 a -- that would be fair to do in this -- in  
 20 that sort of circumstance.  
 21 Q: What is the difference between pay  
 22 and commissions?  
 23 A: Pay can be defined as base pay --  
 24 commissions, base pay, bonus. There's lots of  
 25 variable different types of pay.

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1 D. Berardo  
2 Q: Any other -- any other examples of  
3 you in HR doing anything to protect Mary  
4 Piehler from being treated unfairly besides  
5 targeting her for an investigation?  
6 A: Well --  
7 MR. SULLIVAN: Objection to form.  
8 THE WITNESS: -- Mary and I spoke a  
9 number of different times in a number of  
10 different emails, and if she would have  
11 raised anything that may have been  
12 discriminatory, of course we would have  
13 investigated it even further.  
14 BY MR. THOMAS:  
15 Q: So you -- did you investigate  
16 anything ever?  
17 A: Not from a discriminatory point of  
18 view.  
19 Q: Okay.  
20 A: I would say --  
21 Q: Despite all the conversations with  
22 Mary Piehler, the emails we have seen, you  
23 never once investigated discrimination?  
24 MR. SULLIVAN: Objection to form.  
25 THE WITNESS: That's correct. That

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1 D. Berardo  
2 was never raised. Or -- and that was never  
3 apparent in any of the -- any of the  
4 documents or any of the complaints that  
5 were ever forwarded.  
6 BY MR. THOMAS:  
7 Q: Anything else that you did to protect  
8 her from being treated unfairly?  
9 MR. SULLIVAN: Objection to form.  
10 THE WITNESS: Not that I recall.  
11 BY MR. THOMAS:  
12 Q: Before an employee is terminated for  
13 poor performance, what steps should an  
14 employer go through with that employee --  
15 MR. SULLIVAN: Objection to form.  
16 BY MR. THOMAS:  
17 Q: -- from a human resources  
18 perspective?  
19 A: I can speak in general.  
20 Q: Well, let's -- okay. Go ahead.  
21 A: Sure. So it -- it's -- it would  
22 depend -- so if it's for performance, it would  
23 depend if -- if the person can actually make a  
24 turnaround. If the person can make a  
25 turnaround, they generally will have a verbal

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1 D. Berardo  
2 warning, sometimes a written warning, a  
3 performance improvement plan. Sometimes those  
4 steps are skipped, depending on the  
5 circumstances.  
6 If the person has -- if the manager feels  
7 that there's no hope in the person  
8 improving -- improving, we can move forward  
9 directly with terminations -- termination, at  
10 times. It's all going to be circumstantial,  
11 depending on the circumstances.  
12 Q: Let me show you Exhibit 57, if the  
13 court reporter can show that to you. If you  
14 could turn to DEFS268.  
15 MS. LESTRADE: I think you should  
16 read the whole document.  
17 THE WITNESS: Yeah, can I read the  
18 whole document? Just because I'm --  
19 BY MR. THOMAS:  
20 Q: Yeah, sure.  
21 A: Thank you.  
22 Q: Have you -- let me ask you this:  
23 Have you seen the document before?  
24 A: I -- we did -- I did see this when we  
25 were preparing.

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1 D. Berardo  
2 Q: If you need to read it again, feel  
3 free.  
4 A: Thank you. Okay.  
5 Q: Do you see 2.3.2 on page DEFS268?  
6 A: Yeah.  
7 Q: And were those -- was that the policy  
8 that was in effect at Absolute when  
9 Ms. Piehler was terminated?  
10 A: I can't say for certain if this is  
11 the policy that was in effect. It changed  
12 from time to time.  
13 MR. THOMAS: We would request the  
14 updated copy.  
15 BY MR. THOMAS:  
16 Q: I will represent to you, though,  
17 Mr. Berardo, that this is the copy that was  
18 produced to --  
19 A: Sure.  
20 Q: -- us by Absolute.  
21 A: Okay. So just under the assumption,  
22 this would be the policy -- if this was the  
23 policy that was in force when she was  
24 terminated. Okay.  
25 Q: And does it mention anywhere about

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1 D. Berardo  
2 the fact that steps can be skipped if a  
3 manager wants to skip them?  
4 A: Well, from -- from reading it, so  
5 this policy is only for -- is only for  
6 enforcement of policy and other rules. So  
7 this is not necessarily performance-related.  
8 So it's not something we would follow for a --  
9 like, a performance-related conversation. And  
10 it does say, in 2.1:  
11 Infringements range from minor to  
12 very serious, ultimately extending to  
13 criminal acts; and therefore, the actions  
14 required by managers and HR may vary in  
15 sensitivity.'  
16 Under 2.3 --  
17 Q: So it's your testimony that Mary  
18 Piehler was not fired for violating any  
19 company policy; correct?  
20 A: That's correct, from my recollection.  
21 Q: Was there anything that she violated  
22 that Absolute expected from -- from her as a  
23 policy matter as an employee?  
24 A: Not that I recall.  
25 Q: Okay. And there's nothing about, in

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1 D. Berardo  
2 2.3.2 about skipping steps because of a  
3 manager; correct?  
4 MR. SULLIVAN: Objection to form.  
5 THE WITNESS: Yeah, sure, under  
6 number 2, 'preparation':  
7 Consideration of the disciplinary  
8 measure should consider the following  
9 options.'  
10 So I would refer back to the word 'consider.'  
11 So it doesn't lay out the steps, all four  
12 steps. It just says 'consider,' so...  
13 BY MR. THOMAS:  
14 Q: In Ms. Piehler's case, were these  
15 steps considered?  
16 A: I wouldn't -- this doesn't apply to  
17 Ms. Piehler's case, so those steps --  
18 Q: My question was -- to you were were  
19 these steps considered in Ms. Piehler's case?  
20 A: No -- no, they weren't, because they  
21 don't apply to her.  
22 Q: Why did they not -- what -- what  
23 steps -- the steps -- what steps did apply to  
24 her in terms of what was expected in terms of  
25 interaction between her and the company?

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1 D. Berardo  
2 MR. SULLIVAN: Objection to form.  
3 THE WITNESS: What -- so, sorry,  
4 which -- can you -- can you repeat the  
5 question? I'm sorry.  
6 BY MR. THOMAS:  
7 Q: Sure. What -- what -- was the  
8 company -- in terms of the reason for  
9 Ms. Piehler's termination, what steps prior to  
10 her termination were supposed to go -- were  
11 supposed to occur before -- before she was --  
12 strike -- strike that.  
13 At Absolute when you were there,  
14 when Ms. Piehler was terminated --  
15 A: Yeah.  
16 Q: -- what steps was Absolute supposed  
17 to go through before terminating her?  
18 MR. SULLIVAN: Objection to form.  
19 THE WITNESS: From my recollection,  
20 we weren't really required to follow any  
21 specific steps.  
22 BY MR. THOMAS:  
23 Q: You didn't look at giving Ms. Piehler  
24 a verbal warning?  
25 A: Not under the circumstances, no.

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1 D. Berardo  
2 A: written warning?  
3 A: No.  
4 Q: You didn't consider putting her on a  
5 PIP?  
6 A: Before she was terminated?  
7 Q: Yeah.  
8 A: No.  
9 Q: Yeah, that's right. Because I want  
10 to differentiate that from the one that  
11 Mr. Awtry attempted.  
12 A: Right.  
13 Q: So you just jumped straight from  
14 ground -- from zero to termination without  
15 going through any of those steps?  
16 MR. SULLIVAN: Objection to form.  
17 THE WITNESS: We --  
18 BY MR. THOMAS:  
19 Q: Or even looking at them.  
20 MR. THOMAS: Objection to form.  
21 THE WITNESS: Well, these steps don't  
22 apply to -- in -- in --  
23 BY MR. THOMAS:  
24 Q: I'm not asking you that. I'm asking  
25 you did you think about any of those steps

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1 D. Berardo  
2 with Ms. Piehler?  
3 A: Well, no, because they don't apply.  
4 Q: Let me try again. Did you think  
5 about the steps of a verbal warning to  
6 Ms. Piehler?  
7 A: No, because it didn't apply.  
8 Q: Did you apply -- did you think about  
9 any written warning?  
10 A: No, because it didn't apply.  
11 Q: Did you think about giving her a PIP?  
12 A: No, because it didn't apply.  
13 Q: Did you think about suspending her?  
14 A: No, because it didn't apply.  
15 Q: And do you think that's an  
16 appropriate way to treat an employee, is to  
17 terminate them without giving them a verbal  
18 warning?  
19 A: Under the --  
20 MR. SULLIVAN: Objection to form.  
21 THE WITNESS: Under the  
22 circumstances, yes.  
23 BY MR. THOMAS:  
24 Q: Why?  
25 A: Because the -- from my perspective,

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1 D. Berardo  
2 the -- the -- between Todd and Mary, their  
3 working relationship was -- was a difficult  
4 one, and so Todd was not able to work with  
5 Mary effectively.  
6 Q: Anything else?  
7 A: I mean, no.  
8 Q: Okay. Let's go to -- let's talk  
9 about performance reviews at Absolute. Did  
10 Absolute give performance reviews?  
11 A: Yes.  
12 Q: Was that a function that was carried  
13 out through the HR -- in part through the HR  
14 department?  
15 A: It was administered -- administered  
16 through the HR department, yes.  
17 Q: What is the purpose of performance  
18 reviews?  
19 A: To review performance.  
20 Q: For? What purpose?  
21 A: Well, for -- for feedback, for...  
22 Q: Feedback to the -- feedback to the  
23 employee; correct?  
24 A: Correct. Feedback to the employee  
25 for the employee to -- to -- to have some, you

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1 D. Berardo  
2 know, opportunity to talk about what sort of  
3 personal growth they want to take in their  
4 career, and, you know, to -- to highlight  
5 things that employees -- the employee would be  
6 doing well and things the employee, you know,  
7 could improve on.  
8 Q: And to give an employee an  
9 opportunity to improve on that before being  
10 fired; right?  
11 MR. SULLIVAN: Objection to form.  
12 THE WITNESS: I -- I don't know if  
13 that's the -- if -- if that's the reason of  
14 a performance review.  
15 BY MR. THOMAS:  
16 Q: You don't -- you don't think one of  
17 the purposes of a performance review is to  
18 give an employee an opportunity to improve  
19 their performance so they won't get fired?  
20 A: I mean, I think that would be taking  
21 it to the extreme. If the person was being  
22 fired -- it -- it's not designed for that. An  
23 annual performance --  
24 Q: Or -- or to tell an employee where  
25 they should improve their performance so the

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1 D. Berardo  
2 company won't be in a position where they  
3 think they need to fire the employee; right?  
4 A: Well, sure, that would be accurate,  
5 that -- that a performance review is -- is  
6 there to provide that feedback to help the  
7 employee with their performance, yes.  
8 MR. THOMAS: Okay. If the court  
9 reporter can show the witness Kenny  
10 Exhibit 34.  
11 BY MR. THOMAS:  
12 Q: Once you've had a chance to read  
13 that, let me know.  
14 MS. LESTRADE: What number?  
15 MR. SULLIVAN: 34.  
16 BY MR. THOMAS:  
17 Q: Mr. Berardo, you saw this exhibit on  
18 Monday, didn't you?  
19 A: I didn't -- not from my recollection,  
20 I didn't.  
21 Q: Okay.  
22 A: Okay. You can go ahead.  
23 Q: Okay. First of all, this document  
24 says -- at the top right, it says 'performed  
25 on.' What does 'performed on' mean at

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1 D. Berardo  
2 Absolute in performance reviews in that  
3 location? The top right-hand corner of the  
4 first page.  
5 A: Yeah. I'm -- I'm -- I'm only  
6 speculating because I don't recall  
7 specifically, but it -- it's likely when the  
8 review was -- was submitted. But, again, I  
9 would be speculating.  
10 Q: Now, is there anything in Exhibit --  
11 is Exhibit 34 the last performance evaluation  
12 Ms. Piehler ever received?  
13 A: I -- I don't know. I don't know the  
14 answer to that question.  
15 Q: When was Ms. Piehler fired?  
16 A: Was it July of twenty -- 2015?  
17 Q: So can you -- how -- let me ask you  
18 this: How far in advance was this performance  
19 review prior to her termination?  
20 A: Well, this was for the previous -- or  
21 the last six months of 2014, and it was  
22 completed on -- in February, so it was --  
23 Q: How far was that from when she was  
24 terminated?  
25 A: It was about five months.

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1 D. Berardo  
2 Q: Okay. Is there anything in  
3 Exhibit 34 which is consistent with an  
4 employee who is about to be terminated in four  
5 months?  
6 A: For --  
7 MR. SULLIVAN: Objection -- objection  
8 to form.  
9 THE WITNESS: For performance?  
10 BY MR. THOMAS:  
11 Q: For any reason.  
12 A: Well, for performance, I would say --  
13 I would say there's nothing out -- that stands  
14 out here.  
15 Q: That would indicate the employee was  
16 about to be terminated?  
17 A: Underperforming, yeah.  
18 Q: Or was there anything in here that  
19 highlighted -- let me ask you this: Is there  
20 anything in here that indicates that Todd  
21 Awtry found Ms. Piehler difficult to work  
22 with?  
23 MR. SULLIVAN: Objection to form.  
24 MR. THOMAS: Hey, John.  
25 THE WITNESS: Not that I read.

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1 D. Berardo  
2 BY MR. THOMAS:  
3 Q: Okay. And, in fact, to the contrary,  
4 if you go to -- is there anything in here that  
5 indicates that she's unsupportive of  
6 management decisions?  
7 A: Well, I mean, her responses -- I  
8 mean, her responses are -- are -- you know,  
9 her -- her responses are -- are -- you know,  
10 they -- they tend to be reasons or -- or  
11 excuses versus accepting the feedback.  
12 Q: My question to you was is there  
13 anything in here -- in here that indicates she  
14 was unsupportive of the management decisions?  
15 A: Well, I -- I mean, that kind of  
16 implies that you're unsupportive, if you're  
17 not taking the feedback.  
18 Q: Where -- where does -- where does she  
19 not take the feedback?  
20 A: Well, I can only -- I mean, it's just  
21 from -- from writing. I mean, there's nothing  
22 explicit here, if that's what you're asking.  
23 She doesn't say anything like --  
24 Q: Anything -- what -- I'm asking you  
25 what you're referring to.

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1 D. Berardo  
2 A: Okay.  
3 Q: How about this: Why don't we go to  
4 DEFS10579. And the question is:  
5 Does she approach the business with a  
6 can-do attitude that supports the business  
7 initiatives?  
8 Do you see that?  
9 A: I do, yes.  
10 Q: And what is she rated?  
11 A: She's rated a 3 out of 5.  
12 Q: Which is a -- verbally, a what?  
13 A: I -- I don't recall. I think it --  
14 it --  
15 Q: That means 'meets expectations,'  
16 isn't it?  
17 A: I think that's what it is. I think  
18 it's 'meet expectations.'  
19 Q: Well, can you see it right there?  
20 A: Can -- can I see what?  
21 Q: 'Your evaluation result meets  
22 expectations.'  
23 A: Oh, yes. Sorry. Yes. 'Meets  
24 expectations.'  
25 Q: Why don't -- and why don't you read



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1 D. Berardo  
2 aloud the reviewer comment on this.  
3 A: Reviewer comments?  
4 You are absolutely --'  
5 Q: Yeah.  
6 A: 'You are absolutely a  
7 roll-your-shelves-up kind of person. Would  
8 ask to look at challenges inside ABT as  
9 'how do we get it done?' versus 'it's  
10 broken.' While I agree much is broken, the  
11 exception is leadership will figure out a  
12 way.'  
13 Q: Okay. What about -- how about  
14 'ensuring the team is deriving a strong  
15 relationship with all OEMs and their patch,'  
16 Exhibit 10577?  
17 A: Okay.  
18 Q: What was she rated there?  
19 A: She was rated 4 out of 5 or 'exceeds  
20 expectations.'  
21 Q: And that's 'exceeds expectations,'  
22 you said?  
23 A: Correct.  
24 Q: I won't keep going through it.  
25 A: Okay.

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1 D. Berardo  
2 Q: But let me also take a look at  
3 Exhibit 59. I'm sorry. Wait. Awtry  
4 Exhibit 58.  
5 If you could, Court Reporter, just  
6 show that to the...  
7 THE WITNESS: Thanks.  
8 BY MR. THOMAS:  
9 Q: Let me know when you have had a  
10 chance to read Exhibit 58.  
11 A: Okay.  
12 Q: Now, the issues that Mr. Awtry is  
13 raising regarding Mr. Young are also not  
14 related to policy, are they?  
15 A: No, they're -- it -- it appears that  
16 they're performance.  
17 Q: And what does he do -- first of all,  
18 is Mr. Young a male or a female?  
19 A: He's a male.  
20 Q: What does Mr. Awtry do in terms of  
21 his male subordinates when there's an issue  
22 about their performance?  
23 A: Are --  
24 MR. SULLIVAN: Objection to form.  
25 THE WITNESS: Are you asking me what

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1 D. Berardo  
2 he did with Warren Young?  
3 BY MR. THOMAS:  
4 Q: Yeah. Does he provide a written  
5 warning?  
6 A: It appears that he provided a written  
7 warning, yes.  
8 Q: Did he do that for Ms. Piehler?  
9 A: Sorry?  
10 Q: Did he do that for Ms. Piehler?  
11 A: Around her performance?  
12 Q: Yeah.  
13 A: Her termination wasn't based on  
14 performance.  
15 Q: What was it based on?  
16 A: I have already answered that  
17 question.  
18 Q: What did you say?  
19 THE WITNESS: Can you repeat what I  
20 said.  
21 THE COURT REPORTER: I'll need the  
22 words to find it.  
23 THE WITNESS: Oh, the words to --  
24 BY MR. THOMAS:  
25 Q: You need -- you need to say it again.

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1 D. Berardo  
2 A: Okay.  
3 Q: She was fired based on what? Not  
4 policy.  
5 A: No.  
6 Q: Not performance. What, then?  
7 A: It -- she was -- she was terminated  
8 based on her -- from what I recall, from my  
9 recollection, it was her and Todd's  
10 difficult -- difficult -- difficult working  
11 relationship. Like, they --  
12 Q: Which was not a performance issue by  
13 her; correct?  
14 A: Which is not a -- was not a measure  
15 of her numbers or her --  
16 Q: It was -- it wasn't also a measure of  
17 her complying with policy at Absolute, was it?  
18 A: No, this didn't have anything to do  
19 with policy. Not that I recall. I -- I  
20 haven't read the entire policy manual.  
21 Q: If you read Exhibit 58 and  
22 Exhibit 34, who would you think is more likely  
23 to get terminated in the next five months?  
24 MR. SULLIVAN: Objection to form.  
25 THE WITNESS: I -- I under -- I under

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1 D. Berardo  
2 -- based on performance?  
3 BY MR. THOMAS:  
4 Q: No, just who is more likely to get  
5 terminated --  
6 MR. SULLIVAN: Objection to form.  
7 BY MR. THOMAS:  
8 Q: -- based on your experience in HR  
9 and --  
10 A: I -- I would never make that call  
11 without knowing more facts based on two emails  
12 -- or two documents. I would never make that  
13 call.  
14 Q: Based on those two, though, who would  
15 be in more trouble?  
16 A: I would never -- I would never make  
17 that call.  
18 Q: When a manager says to you 'you  
19 mentioned to me in one of our previous  
20 conversations, not Friday,' that:  
21 I know I'm running out of time, and  
22 if I continue to miss my quota, you won't  
23 have to manage me out of the business,  
24 which leads me to believe you understand  
25 the urgency to correct performance

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1 D. Berardo  
2 immediately.'  
3 Do you see that? In Exhibit 58.  
4 A: Yeah. And what line is that?  
5 Q: The second-to-last.  
6 A: Second-to-last line?  
7 Q: Exhibit 58.  
8 A: Oh, the last page? The first --  
9 Q: First -- first page.  
10 A: Oh, the first page, the last line?  
11 Or the...  
12 Q: Second-to-last line.  
13 A: Oh, right. Okay.  
14 Q: Second-to-last paragraph.  
15 A: Okay.  
16 Q: Do you see that?  
17 A: I do.  
18 Q: Mary Piehler never got a warning like  
19 that, did she?  
20 A: Well, this was -- this was a  
21 performance -- this was a performance issue,  
22 so Mary never got a performance-based warning  
23 because there was no big performance numbers  
24 or quota that --  
25 Q: Let's not go round and round about

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1 D. Berardo  
2 this, Mr. Berardo.  
3 A: Okay.  
4 Q: Let's just get to the point.  
5 A: Sure.  
6 Q: She was never given a warning like  
7 that; right?  
8 A: She was never given a warning about  
9 her performance, no.  
10 Q: Or given a warning in any sense that  
11 she was about to be terminated?  
12 A: warning that she was -- a heads-up  
13 that she was going to be terminated? Not that  
14 -- not -- my recollection is that she was not  
15 given a heads-up that she was going to be  
16 terminated.  
17 Q: Or a warning that if she continued to  
18 engage in certain behaviour, she was likely to  
19 be terminated?  
20 A: I -- I can only speak for myself and  
21 my knowledge, and my knowledge --  
22 Q: Do you have any knowledge that she  
23 was given any warning that her employment was  
24 in jeopardy?  
25 A: Not my -- not to my recollection.

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1 D. Berardo  
2 Q: But Mr. Young, the male employee,  
3 was?  
4 A: Based on his performance --  
5 Q: Correct?  
6 A: -- yes. Yeah.  
7 Q: And, in fact, Mr. Young wasn't even  
8 fired; he was kept on with the same pay after  
9 this. Does that surprise you?  
10 A: I don't recall the --  
11 MR. SULLIVAN: Objection --  
12 THE WITNESS: -- circumstances.  
13 MR. SULLIVAN: -- to form.  
14 BY MR. THOMAS:  
15 Q: Okay. Tell me about the open  
16 door-policy at Absolute.  
17 MR. SULLIVAN: Objection to form.  
18 THE WITNESS: I mean, the open-door  
19 policy was that, you know, if -- if anyone  
20 had an issue or a complaint, they could  
21 come to anyone on the leadership team.  
22 BY MR. THOMAS:  
23 Q: And would they be fired for any  
24 issues they raised?  
25 A: Any --

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1 D. Berardo  
2 Q: Under the open-door policy?  
3 A: Any issues that they raised?  
4 Q: Yeah.  
5 A: Would they be fired because of it? I  
6 mean --  
7 Q: Yeah.  
8 A: -- I can't -- I can't speculate what  
9 someone would come and -- and tell us. If  
10 they were telling us they were doing something  
11 illegal, yeah, they could get fired.  
12 Q: But in terms of their comments about  
13 how the company could be run better or  
14 differently, that wouldn't -- and -- and they  
15 came forward under the open-door policy, they  
16 weren't going to risk termination for doing  
17 that, were they?  
18 MR. SULLIVAN: Objection to form.  
19 THE WITNESS: I -- I can't say that  
20 they were or weren't. You know, if --  
21 if --  
22 BY MR. THOMAS:  
23 Q: So it's possible someone could -- so  
24 you're saying that under the open-door policy,  
25 someone could come to their manager, express

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1 D. Berardo  
2 thoughts about how the company could be run  
3 better, and they could be fired for it?  
4 MR. THOMAS: Objection to form.  
5 BY MR. THOMAS:  
6 Q: That was the open-door policy at  
7 Absolute?  
8 A: I wouldn't say that's the open-door  
9 policy, but, I mean, it -- it would depend on  
10 circumstances.  
11 Q: Did you say that it is the open-door  
12 policy, what I --  
13 A: No.  
14 Q: -- just described?  
15 A: I said that wouldn't be the open-door  
16 policy --  
17 Q: Okay.  
18 A: -- but it would depend on  
19 circumstances.  
20 MR. THOMAS: If you -- if the court  
21 reporter could show the witness Exhibit 24.  
22 THE WITNESS: Thank you.  
23 BY MR. THOMAS:  
24 Q: Once you have finished -- once you've  
25 had a chance to read it, let me know.

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1 D. Berardo  
2 A: Okay. Okay.  
3 Q: Now that you have read that, could  
4 you -- would you say that that email was  
5 degrading to Todd Awtry?  
6 MR. SULLIVAN: Objection to form.  
7 THE WITNESS: Degrading to Todd  
8 Awtry?  
9 BY MR. THOMAS:  
10 Q: Yeah. What Mary Piehler said, was  
11 she being degrading to Todd Awtry?  
12 A: It was very contradictory to what  
13 Todd was trying to tell her.  
14 Q: My question to you was is Mary  
15 Piehler being degrading to Todd Awtry in that  
16 email?  
17 MR. SULLIVAN: Objection to form.  
18 THE WITNESS: I mean, that's -- in my  
19 opinion?  
20 BY MR. THOMAS:  
21 Q: As an HR person at Absolute, yes, do  
22 you consider this to be degrading treatment  
23 from one employee to another?  
24 MR. SULLIVAN: Objection to form.  
25 THE WITNESS: I don't know if I -- I

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1 D. Berardo  
2 wouldn't use the word 'degrading.'  
3 BY MR. THOMAS:  
4 Q: Would you use the term 'berating'?  
5 A: Sorry?  
6 Q: Berating, b-e-r-a-t-i-n-g. Berating.  
7 Would you say Mary Piehler was berating Todd  
8 Awtry in this email?  
9 MR. THOMAS: Objection to form.  
10 THE WITNESS: Can -- can you -- can  
11 you define 'berating' to me.  
12 BY MR. THOMAS:  
13 Q: What does -- what does 'berating'  
14 mean to you?  
15 A: I guess someone that is -- you know,  
16 some -- someone that is -- that is not showing  
17 respect.  
18 Q: You think Mary Piehler is not showing  
19 respect to Todd in this email?  
20 A: Yeah, I think there's -- there's  
21 points where she's not.  
22 Q: Do you think Todd is showing respect  
23 to Mary in this email?  
24 MR. SULLIVAN: Objection to form.  
25 THE WITNESS: From reading it, I

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1 D. Berardo  
2 mean, it seems like Todd is trying to  
3 provide her some of the -- some feedback.  
4 BY MR. THOMAS:  
5 Q: What do you think of Mary's comments  
6 about what Todd was saying to her? Do you  
7 think that was appropriate?  
8 MR. SULLIVAN: Objection to form.  
9 THE WITNESS: Can you point me to --  
10 to -- to the paragraph you're speaking of.  
11 BY MR. THOMAS:  
12 Q: Well, we can just start with in the  
13 first italicized thing:  
14 Criticizing me and my 'leadership' in  
15 front of one of my peers is not really the  
16 right thing to do. You even commented that  
17 you were going to 'get personal' before you  
18 started to criticize me? Obviously, I can  
19 sense you're annoyed and frustrated, but I  
20 was being honest, and my reps will back up  
21 everything that I told you. There is no  
22 hidden agenda here. I was clear,  
23 transparent, and doing what I still believe  
24 was the right thing, telling my manager the  
25 concerns of my team. I don't see this as

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1 D. Berardo  
2 bad leadership at all.'  
3 A: Okay. And so, sorry, what was the --  
4 what was the original question?  
5 Q: Do you think that it was appropriate  
6 for Todd Awtry to say to an employee that he's  
7 about to get personal with her?  
8 MR. SULLIVAN: Objection to form.  
9 BY MR. THOMAS:  
10 Q: And do so in front of her peers?  
11 A: If -- I mean, if that is what he --  
12 if that is what he said, to 'get personal,'  
13 I'm not sure what he meant by that.  
14 Q: Is there ways that that would be  
15 okay?  
16 A: Is there a way to -- that that would  
17 be okay?  
18 Q: For a manager to speak to a  
19 subordinate with a -- in front of a peer?  
20 MR. SULLIVAN: Objection to form.  
21 THE WITNESS: If that's what he said,  
22 if he actually said 'I'm going to get  
23 personal,' I probably would coach him to --  
24 I would ask what is he trying to say and  
25 coach him to use other language besides

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1 D. Berardo  
2 'get personal.'  
3 BY MR. THOMAS:  
4 Q: Anything in those three paragraphs  
5 where Mary is berating or showing lack of  
6 respect to Todd?  
7 A: Well, just the overall email. Not  
8 really -- just from my point of view, not --  
9 not really taking any of the feedback or  
10 taking any ownership.  
11 Q: Why don't we do this: Show me one  
12 sentence or one paragraph where Mary Piehler  
13 is showing a lack of respect to Todd.  
14 MR. SULLIVAN: Objection to form.  
15 THE WITNESS: I -- there's -- there's  
16 no -- no one sentence. I -- my point was  
17 that Todd was providing her feedback, and  
18 the email was all about her, you know,  
19 providing contrary opinions to Todd.  
20 BY MR. THOMAS:  
21 Q: And on the open-door policy, she was  
22 free to provide contrary opinions to Todd;  
23 correct?  
24 MR. SULLIVAN: Objection to form.  
25 THE WITNESS: I don't have the

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1 D. Berardo  
2 open-door policy in front of me, so if -- I  
3 don't know if we have that as an exhibit.  
4 BY MR. THOMAS:  
5 Q: Do you have any reason to believe  
6 that's not true?  
7 MR. SULLIVAN: Objection to form.  
8 THE WITNESS: I mean, someone has --  
9 someone has a right to say whatever they  
10 want.  
11 BY MR. THOMAS:  
12 Q: Under the open-door policy, that's  
13 what's allowed; right?  
14 A: Well, I think any human has a right  
15 to say -- you can say anything to anyone, if  
16 you really want to.  
17 Q: I'm talking about the open-door  
18 policy in HR. Was it okay for some -- for a  
19 subordinate to say something to a manager  
20 about how -- how they thought the company  
21 could do better?  
22 A: I -- I would need to see the actual  
23 open-door policy.  
24 Q: Any reason you think that Mary  
25 Piehler violated that policy, based on what

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1 D. Berardo  
2 you know right now, from Exhibit 24?  
3 A: If you can show me the policy, I can  
4 answer that question.  
5 Q: No, I'm saying -- I'm asking you  
6 based on your knowledge.  
7 A: Based on my knowledge of the  
8 open-door policy, I mean, my vague knowledge  
9 of what the open-door policy was I don't think  
10 got into specifics of what you can and can't  
11 do. So I can't answer that question.  
12 Q: Do you think Exhibit 24 warranted an  
13 employee's termination? And, specifically,  
14 Mary Piehler's?  
15 MR. SULLIVAN: Objection to form.  
16 THE WITNESS: If we're -- if -- are  
17 we talking about a single document? If --  
18 if I was presented --  
19 BY MR. THOMAS:  
20 Q: Yes.  
21 A: -- a single document?  
22 Q: Yes.  
23 A: You know, it -- it would essentially  
24 be up to the manager, and we would have that  
25 conversation. It's hard for me to answer

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1 D. Berardo  
2 that, because it's -- it's not just a single  
3 email.  
4 Q: Well, what did -- what emails did you  
5 look at in -- did -- were you -- let me ask  
6 you this: Were you involved in the decision  
7 to terminate Ms. Piehler?  
8 A: The decision came from -- the  
9 decision came from Todd to terminate --  
10 Q: Did you --  
11 A: -- Mary.  
12 Q: Did you do anything besides observe  
13 and report it?  
14 A: I --  
15 MR. SULLIVAN: Objection to form.  
16 THE WITNESS: I had conversations --  
17 we definitely had conversations with Todd.  
18 BY MR. THOMAS:  
19 Q: When did you have those  
20 conversations?  
21 A: Before -- I mean, before the decision  
22 was made.  
23 Q: Did you question whether  
24 discrimination might be an issue?  
25 A: No, because I've never observed any

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1 D. Berardo  
2 sort of discrimination.  
3 Q: Did you investigate -- did you talk  
4 to Todd about Mary Piehler's complaints  
5 about -- that she had made to you about him?  
6 Did you investigate those?  
7 MR. SULLIVAN: Objection to form.  
8 THE WITNESS: I don't -- I don't have  
9 recollection of that.  
10 BY MR. THOMAS:  
11 Q: Would there ever be a reason for a  
12 manager not to tell HR that they were looking  
13 to replace an employee?  
14 MR. SULLIVAN: Objection to form.  
15 THE WITNESS: Sorry, would there ever  
16 be a reason why a manager wouldn't tell HR  
17 that they were looking to replace an  
18 employee?  
19 BY MR. THOMAS:  
20 Q: Yeah.  
21 A: Well, if they're looking to replace  
22 the HR person, that would be a reason.  
23 Q: Other than that?  
24 A: There may be other reasons. I -- I  
25 mean, I can't think of the thousands and

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1 D. Berardo  
2 thousands of reasons off the top of my head.  
3 Not off the top of my head right now.  
4 Q: What about not telling Recruiting  
5 that they're looking to replace a manager?  
6 MR. SULLIVAN: Objection to form.  
7 THE WITNESS: Not telling --  
8 BY MR. THOMAS:  
9 Q: Any reason -- any reason -- any  
10 reason that a supervisor should keep  
11 Recruiting in the dark about it?  
12 A: It's -- it's possible if they want to  
13 keep something confidential, that they -- they  
14 keep it to a limited amount of people before  
15 they replace someone.  
16 Q: I'm talking about Recruiting.  
17 A: So you're -- you're asking if --  
18 sorry, can you repeat the question, then.  
19 Q: Yes. Should a -- if a supervisor is  
20 looking to replace a manager --  
21 A: Yeah.  
22 Q: -- should that supervisor keep  
23 Recruiting in the dark when they're out  
24 advertising for the job?  
25 MR. SULLIVAN: Objection to form.

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1 D. Berardo  
2 THE WITNESS: That happens, yes.  
3 BY MR. THOMAS:  
4 Q: Should it --  
5 MR. SULLIVAN: Objection to form.  
6 BY MR. THOMAS:  
7 Q: -- from an HR perspective? When?  
8 A: In circumstances. Just when it's a  
9 sensitive termination.  
10 Q: Why shouldn't Recruiting be told?  
11 A: Because you want to keep -- you want  
12 to keep sensitive information as tight as  
13 possible and not tell -- only tell people that  
14 it -- that's -- that would be absolutely  
15 necessary to know.  
16 Q: Where did you first learn that Mary  
17 Piehler was going to be -- was under  
18 consideration for termination?  
19 A: I don't recall the specific date.  
20 It -- it was -- it could have been a month,  
21 month and a half, couple of months before she  
22 was actually terminated. I -- but my -- I  
23 don't -- I don't know the specific dates, so I  
24 wouldn't hold to that -- that date.  
25 Q: What is a position number at

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1 D. Berardo  
2 Absolute?  
3 A: A position number is something that  
4 was controlled by finance. And so every  
5 position had a number, and then an employee  
6 was assigned to that number. And so an  
7 employee could leave, and their employee  
8 number could leave with them, but the position  
9 number would stay with that position. So  
10 the -- there could be multiple employees in  
11 that same position number over the course of  
12 the years.  
13 Q: Did each employee have a separate  
14 position number?  
15 A: They should have, yes. At -- at --  
16 we -- I should say that we implemented  
17 position numbers at a certain point. They  
18 weren't always at Absolute, and I don't know  
19 when they were actually -- they were actually  
20 implemented.  
21 Q: But once you had a position number --  
22 once you had implemented position numbers,  
23 only one employee had a position number;  
24 correct? Or each employee had a unique  
25 position number; right?

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1 D. Berardo  
2 A: I mean, generally, this was, again,  
3 managed by finance, so I'm -- I'm not the  
4 expert when it comes to position numbers. So  
5 it would probably be someone in finance that  
6 would be able to answer that definite -- more  
7 definitively.  
8 Q: When somebody left and a new person  
9 took their role, they would be given the same  
10 position number?  
11 A: When someone left and a new --  
12 Q: As the person -- as the person who  
13 left?  
14 A: It -- it's a possibility. Or -- so,  
15 usually, that -- yeah, usually, the position  
16 number would stay around, unless the position  
17 was eliminated. And someone would -- would  
18 take that position number, in general, I  
19 think.  
20 Q: What if the position was changed?  
21 Would a new position number be created?  
22 A: I don't know the answer to that. I'm  
23 not sure. It's a finance question.  
24 MR. THOMAS: If you could show,  
25 Jessica, the witness Exhibit 81.

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1 D. Berardo  
2 THE WITNESS: Thanks.  
3 BY MR. THOMAS:  
4 Q: And, Mr. Berardo, I would like you to  
5 read that exhibit and let me know when you're  
6 done.  
7 Jessica, just to save some time,  
8 from the new exhibits, Berardo new exhibits,  
9 if you could pull O, P, I, J, and N. And you  
10 can mark those. Those will be coming for the  
11 witness next.  
12 MS. LESTRADE: Did we lose her?  
13 MR. MANINDER: That might have been  
14 Mary falling off.  
15 MR. THOMAS: Mary, are you still  
16 there?  
17 MS. LESTRADE: I think she may have  
18 fallen off.  
19 MR. THOMAS: Oh, okay. Want to just  
20 loop her back in there? Or did she -- did  
21 she call in?  
22 MS. LESTRADE: No, we can call her,  
23 but -- yeah, hold on.  
24 MR. THOMAS: Okay.  
25 MS. LESTRADE: I will try to get her

1 D. Berardo  
2 back.  
3 THE COURT REPORTER: Let's go off the  
4 record.  
5 MS. LESTRADE: Okay.  
6 THE WITNESS: Can we take a  
7 two-minute break, then.  
8 MS. LESTRADE: Sure, yeah.  
9 VIDEOGRAPHER: Going off record. The  
10 time is 6:18.  
11 (PROCEEDINGS RECESSED AT 6:18 P.M.)  
12 (PROCEEDINGS RECONVENED AT 6:27 P.M.)  
13 VIDEOGRAPHER: Back on the record.  
14 The time is 6:27.  
15 BY MR. THOMAS:  
16 Q: All right. Mr. Berardo, does  
17 Exhibit 81 accurately describe the termination  
18 meeting with Ms. Piehler?  
19 A: Yeah, from my recollection, it does.  
20 Q: Did you consider the exit interview  
21 to be bizarre?  
22 A: The -- the request for the -- the  
23 exit interview?  
24 Q: No, sorry, the termination meeting.  
25 Did you consider the termination meeting to be

1 D. Berardo  
2 bizarre?  
3 A: No.  
4 Q: Did you consider Mary's reaction at  
5 the termination meeting to be bizarre?  
6 A: No.  
7 Q: Why was a third party present for the  
8 meeting?  
9 A: Because I couldn't be there in  
10 person, and so it's a best practice to have  
11 another person in the room.  
12 Q: Was it appropriate for Ms. Piehler's  
13 severance, financial, and benefits to be  
14 discussed with a third party?  
15 MR. SULLIVAN: Objection to form.  
16 THE WITNESS: It's -- it's -- it's  
17 common -- it's common -- if someone is  
18 witnessing a termination, it's common  
19 practice for them to be in the room during  
20 that termination meeting. The full  
21 termination meeting.  
22 BY MR. THOMAS:  
23 Q: Without going around and around, is  
24 that a yes or a no?  
25 A: Can you repeat the question.

1 D. Berardo  
2 MR. THOMAS: Yes. Can the court  
3 reporter read it back.  
4 (REPORTER READ BACK)  
5 THE WITNESS: Yes, it was appropriate  
6 for that to be discussed while that third  
7 party was in the room.  
8 BY MR. THOMAS:  
9 Q: Why was Tom Ioele hiding and not  
10 present?  
11 A: I don't -- I don't know. I don't  
12 know that he was even hiding.  
13 Q: Why wasn't he -- why wasn't he  
14 present in the room?  
15 A: Well, we had the -- that  
16 representative in the room, Catherine.  
17 Q: And let's go through here. Where was  
18 -- where was Tom in relation to the meeting?  
19 A: I -- I don't know. I don't have any  
20 recollection of Tom.  
21 Q: Well, he's listed as being present in  
22 the room. Do you see that?  
23 A: Yes.  
24 Q: How come Mary Piehler couldn't see  
25 him?

1 D. Berardo  
2 A: I mean, he must -- he must have  
3 been present. Because at -- the bottom  
4 sentence says:  
5 Tom indicated he would follow up with  
6 Mary, since he knows her personally.  
7 Maybe --  
8 Q: Why -- why wasn't he -- where was --  
9 was he hiding somewhere in the room?  
10 A: Perhaps he was on the phone. I -- I  
11 don't -- I don't recall.  
12 Q: Well, you said he had to be present  
13 in the room.  
14 A: Sorry, present? I -- I was not  
15 present in the room, and it marks me as  
16 present. So he could have been on the phone.  
17 I -- I don't know.  
18 Q: But you're marked -- you're marked as  
19 being on the phone.  
20 A: Okay. I don't -- I don't know.  
21 Q: Is there any good explanation as to  
22 why someone would hide in the middle of a  
23 termination meeting?  
24 MR. SULLIVAN: Objection to form.  
25 THE WITNESS: Why someone would hide

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1 D. Berardo  
2 in a termination meeting? Is this a  
3 hypothetical question?  
4 BY MR. THOMAS:  
5 Q: Well, Tom Ioele was present for the  
6 termination meeting but was hiding somewhere  
7 where he couldn't be seen by Ms. Piehler. Is  
8 there any good reason for that?  
9 A: I don't think that's --  
10 MR. SULLIVAN: Objection to form.  
11 THE WITNESS: I don't think that's an  
12 accurate statement.  
13 BY MR. THOMAS:  
14 Q: Which part of it is not accurate?  
15 A: That he was hiding in the room.  
16 Q: Well, why couldn't he -- okay. If --  
17 if you're in a conference room in a hotel and  
18 three people are present -- four, including  
19 Ms. Piehler -- why couldn't Mr. Ioele be seen?  
20 MR. SULLIVAN: Objection to form.  
21 THE WITNESS: I mean, I think that's  
22 a question for Catherine and Tom. I -- I  
23 wasn't in the room, so --  
24 BY MR. THOMAS:  
25 Q: Not you as head of HR?

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1 D. Berardo  
2 A: I wasn't in the room, so I didn't  
3 observe who was in -- who was actually in the  
4 room, unfortunately.  
5 Q: It wouldn't be appropriate for him  
6 to -- for someone to not make themselves known  
7 and hide in a room during a termination  
8 meeting, would it?  
9 MR. SULLIVAN: Objection to form.  
10 THE WITNESS: If -- if you're  
11 speaking in a general sense, yes, it would  
12 not be appropriate for someone to hide in a  
13 room during a termination --  
14 BY MR. THOMAS:  
15 Q: What about in --  
16 A: -- meeting.  
17 Q: -- in Mary Piehler's case? Would it  
18 be appropriate there?  
19 A: If he was hiding?  
20 Q: Or not visible.  
21 A: If he was hiding and he didn't make  
22 himself present to Mary?  
23 Q: Correct.  
24 A: I imagine that would be  
25 inappropriate, yes.

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1 D. Berardo  
2 Q: Did you know that Ms. Piehler's  
3 husband had cancer?  
4 A: I'm -- I'm not sure if I knew before  
5 the termination. I definitely knew after the  
6 termination when speaking with Mary.  
7 Q: And didn't Absolute promise that they  
8 were going to continue Ms. Piehler's health  
9 benefits?  
10 A: I don't recall Absolute making  
11 that -- that promise. Generally, in the -- in  
12 the -- in the severance, it's part of a  
13 severance to -- I just don't -- I can't speak  
14 to it. I don't -- I don't have the  
15 termination letter in front of me. I don't  
16 know what was offered or what wasn't.  
17 Q: Did you talk to Ms. Piehler about her  
18 medical coverage? Because you cancelled it on  
19 them and Mr. Piehler when he was going in for  
20 cancer surgery?  
21 A: I'm -- we may have spoken. Mary and  
22 I spoke quite a bit on the phone after the  
23 termination. I don't --  
24 Q: Did it include the fact that you had  
25 cancelled the health insurance on her husband

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1 D. Berardo  
2 who had cancer, despite promising not to do  
3 so?  
4 A: So --  
5 MR. SULLIVAN: Objection to form.  
6 THE WITNESS: Yeah, the way the  
7 insurance works in the US is -- is  
8 insurance is not cancelled. Someone can go  
9 on COBRA and can continue that coverage  
10 once -- once the payment has stopped from  
11 the company.  
12 BY MR. THOMAS:  
13 Q: My question to you is didn't you  
14 cancel Ms. Piehler's insurance immediately  
15 upon her exit meeting, even though you had  
16 told her it was not being cancelled?  
17 MR. SULLIVAN: Objection to form.  
18 BY MR. THOMAS:  
19 Q: And the only way she found out was  
20 when her husband went in for cancer treatment,  
21 and there was no medical coverage?  
22 A: No, I wouldn't say that's accurate.  
23 We would have went through this with her in  
24 the termination letter, and it would have been  
25 laid out in the termination letter.



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1 D. Berardo  
2 Q: You're not saying -- so you're  
3 denying that you all cancelled the insurance  
4 on Mary Piehler and her husband who had  
5 cancer?  
6 A: I -- I'm not denying the fact that  
7 the company stopped paying for coverage and  
8 she was referred to COBRA. What I'm saying is  
9 that -- is that that was all laid out in  
10 the -- in the -- in the severance package, and  
11 that would have been -- gone -- we would have  
12 gone over that during that termination  
13 meeting.  
14 Q: Now, how much -- how do you determine  
15 how much severance an employee is to receive  
16 when they are terminated?  
17 A: Typically, it's a -- it's a question  
18 that -- that we have with our legal counsel,  
19 and so it -- it will depend on -- on the  
20 circumstance, and then that -- that will be  
21 discussed with the legal counsel to come up  
22 with a recommendation, depending on the  
23 circumstances. And location.  
24 Q: Do you ever offer severance to an  
25 employee who resigns voluntarily?

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1 D. Berardo  
2 A: Resigns voluntarily? It can happen.  
3 Q: Do you know why Amy Rathbun was  
4 offered such a large severance package, even  
5 though she resigned voluntarily?  
6 A: I wasn't around for Amy's  
7 resignation. I don't know the details.  
8 Q: What would be the circumstances under  
9 which a person would be offered a large  
10 severance package when they left voluntarily?  
11 MR. SULLIVAN: Objection to form.  
12 THE WITNESS: So you're -- you're --  
13 you're just asking me in general  
14 hypothetically?  
15 BY MR. THOMAS:  
16 Q: No, at HR -- at Absolute when you  
17 were in HR.  
18 MR. SULLIVAN: Objection to form.  
19 THE WITNESS: I don't recall -- I  
20 don't recall us offering a severance  
21 package to someone that resigned  
22 voluntarily. My recollection -- I don't  
23 recall that.  
24 BY MR. THOMAS:  
25 Q: All right. Let me show you

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1 D. Berardo  
2 Exhibits -- what has been marked as  
3 Exhibits 87 through 91. Let me know when you  
4 have had a chance to read those.  
5 (Exhibit 87 was marked for  
6 identification and is attached hereto.)  
7 (Exhibit 88 was marked for  
8 identification and is attached hereto.)  
9 (Exhibit 89 was marked for  
10 identification and is attached hereto.)  
11 (Exhibit 90 was marked for  
12 identification and is attached hereto.)  
13 (Exhibit 91 was marked for  
14 identification and is attached hereto.)  
15 MR. THOMAS: And, Jessica, if you can  
16 mark Berardo Exhibit A as 92.  
17 (Exhibit 92 was marked for  
18 identification and is attached hereto.)  
19 MR. THOMAS: And, Jessica, one more  
20 exhibit. Berardo Exhibit X as 93.  
21 (Exhibit 93 was marked for  
22 identification and is attached hereto.)  
23 THE WITNESS: Okay.  
24 BY MR. THOMAS:  
25 Q: All right. These -- these documents,

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1 D. Berardo  
2 some of which are redacted, involve  
3 discussions with legal and other people  
4 regarding Ms. Piehler's termination.  
5 Do you -- how far in advance of  
6 consulting legal do you remember discussing  
7 Ms. Piehler's termination?  
8 A: With Todd?  
9 Q: With anyone.  
10 A: I don't -- I don't recall  
11 specifically the -- the timeline of -- of who  
12 I talked to about, you know, her termination  
13 before we spoke with legal.  
14 Q: How -- how long -- how soon after the  
15 idea of her being terminated did you contact  
16 legal?  
17 A: It -- it -- I don't -- I don't know  
18 the answer to that. It -- it would have been  
19 fairly quickly, I would imagine.  
20 Q: And 'fairly quickly' meaning a week  
21 or two?  
22 A: I don't -- I don't know. I -- I  
23 don't have specific times.  
24 Q: Well, you used the words 'fairly  
25 quickly,' so I'm asking what you mean by --

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1 D. Berardo  
2 A: Yeah.  
3 Q: -- 'fairly quickly.'  
4 A: It could be -- it could be a day; it  
5 could be a couple of weeks.  
6 Q: Okay.  
7 A: I don't know.  
8 Q: Do you wish you had known about  
9 Thomas Kenny's comment when you made -- when  
10 the termination decision was made?  
11 MR. SULLIVAN: Objection to form.  
12 THE WITNESS: Do I -- do I wish?  
13 BY MR. THOMAS:  
14 Q: Would you like -- let me put it this  
15 way: Would you like to have known about it?  
16 MR. SULLIVAN: Objection to form.  
17 THE WITNESS: Well, as I said before,  
18 I would have liked to have known about it  
19 when -- when it happened, yes.  
20 BY MR. THOMAS:  
21 Q: Would you have liked to have known  
22 about it in terms of how you would have  
23 approached the termination decision?  
24 A: No.  
25 MR. SULLIVAN: Objection to form.

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1 D. Berardo  
2 THE WITNESS: No.  
3 BY MR. THOMAS:  
4 Q: What could you have done better in  
5 dealing with Mary Piehler at Absolute, from an  
6 HR perspective?  
7 MR. SULLIVAN: Objection to form.  
8 THE WITNESS: You know, I believe --  
9 oh.  
10 MR. SULLIVAN: Keep going.  
11 MS. LESTRADE: Just keep going.  
12 THE WITNESS: Okay. Yeah, I believe  
13 that -- that -- that I did everything that  
14 I felt was appropriate at the time in -- in  
15 -- in dealing with Mary.  
16 Oh, he -- he can't hear us either.  
17 MR. SULLIVAN: Is Mary still on?  
18 THE COURT REPORTER: Okay.  
19 VIDEOGRAPHER: Should we --  
20 MS. LESTRADE: Hello?  
21 VIDEOGRAPHER: -- go off record,  
22 counsel? Should we go off?  
23 MR. SULLIVAN: It's his -- it's his  
24 deposition --  
25 MS. LESTRADE: It's his deposition.

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1 D. Berardo  
2 MR. SULLIVAN: -- but I guess he  
3 can't hear us, so...  
4 MS. LESTRADE: I don't think we -- I  
5 don't think we --  
6 MS. VAN BRUNT-PIEHLER: Yes.  
7 MS. LESTRADE: -- need to.  
8 MS. VAN BRUNT-PIEHLER: I'm still on.  
9 MR. SULLIVAN: Okay.  
10 MS. LESTRADE: Oh.  
11 MR. SULLIVAN: We lost Nelson. We'll  
12 patch him back in.  
13 MS. VAN BRUNT-PIEHLER: Okay.  
14 MR. SULLIVAN: He -- he's got to call  
15 us, because it's just going to go to his...  
16 MR. MALLI: Unless he gives us the  
17 number again.  
18 MS. LESTRADE: Let's see. Maybe they  
19 will fix it and get their act together on  
20 their end.  
21 MR. SULLIVAN: He's got to call us.  
22 MS. LESTRADE: Ms. Piehler, are you  
23 still on the line?  
24 MR. SULLIVAN: Hit the resume.  
25 Resume.

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1 D. Berardo  
2 MS. LESTRADE: Resume?  
3 MR. SULLIVAN: Yeah. Okay.  
4 MS. LESTRADE: Hello? Is there  
5 anyone on the line?  
6 MS. VAN BRUNT-PIEHLER: Mary is on.  
7 MS. LESTRADE: Okay.  
8 MR. SULLIVAN: Okay.  
9 MS. LESTRADE: We're going to have to  
10 end the call with you because their --  
11 MS. VAN BRUNT-PIEHLER: Okay.  
12 MS. LESTRADE: -- phone isn't  
13 working.  
14 MR. SULLIVAN: We'll -- we'll connect  
15 back in when they call here, so --  
16 MS. VAN BRUNT-PIEHLER: Okay. No  
17 problem.  
18 MR. SULLIVAN: -- stand -- stand by.  
19 MS. LESTRADE: Okay.  
20 MR. MALLI: Do you want me to hang  
21 up?  
22 MR. SULLIVAN: Yeah.  
23 MS. LESTRADE: Yes.  
24 MR. SULLIVAN: Hang up, and we'll  
25 call you back.

1 D. Berardo  
 2 MS. LESTRADE: Okay.  
 3 MS. VAN BRUNT-PIEHLER: Okay.  
 4 MS. LESTRADE: Bye.  
 5 Is he going to call? Does he know to  
 6 call, do you think?  
 7 MR. SULLIVAN: What does that say?  
 8 MS. LESTRADE: 'We're going to take  
 9 ours off 'night' so you can call.'  
 10 MR. SULLIVAN: Okay. All right.  
 11 MS. LESTRADE: Okay. So --  
 12 MR. SULLIVAN: Let's try again.  
 13 MS. LESTRADE: -- now?  
 14 UNIDENTIFIED SPEAKER: Thank you for  
 15 calling Thomas & Solomon. This is Kyle.  
 16 How can I help you?  
 17 MS. LESTRADE: Hi, we're in the  
 18 middle of a deposition with Nelson Thomas.  
 19 THE WITNESS: Okay. One moment,  
 20 please.  
 21 MS. LESTRADE: We need get him on the  
 22 line.  
 23 MR. THOMAS: Hey. Do we have you  
 24 back?  
 25 MR. SULLIVAN: Yeah. We'll patch in

1 D. Berardo  
 2 Mary.  
 3 MR. THOMAS: Okay. Perfect.  
 4 Thank you.  
 5 MS. VAN BRUNT-PIEHLER: Hello, Mary  
 6 Piehler.  
 7 MR. SULLIVAN: Hi. Hold on. We're  
 8 going to get Nelson on.  
 9 MS. VAN BRUNT-PIEHLER: Okay. Sure.  
 10 MS. LESTRADE: Everyone on?  
 11 MR. THOMAS: I'm here.  
 12 MS. LESTRADE: Ms. Piehler?  
 13 MS. VAN BRUNT-PIEHLER: I'm here.  
 14 MS. LESTRADE: Okay.  
 15 MR. SULLIVAN: Okay.  
 16 MR. THOMAS: Okay.  
 17 MS. VAN BRUNT-PIEHLER: I'm here.  
 18 MR. SULLIVAN: Yeah.  
 19 MS. LESTRADE: Okay.  
 20 MR. SULLIVAN: We're good.  
 21 MR. THOMAS: Great. Can we go back  
 22 on the -- I don't -- did we go off the  
 23 record or --  
 24 MR. SULLIVAN: Yes. Yes. No?  
 25 THE COURT REPORTER: No.

1 D. Berardo  
 2 VIDEOGRAPHER: No.  
 3 MR. SULLIVAN: Okay. We're back on.  
 4 Well, we're on.  
 5 MR. THOMAS: All right. And then can  
 6 the court reporter read back the last  
 7 question and the answer until it stopped.  
 8 (REPORTER READ BACK)  
 9 BY MR. THOMAS:  
 10 Q: From where you sit today, would you  
 11 have done anything differently?  
 12 MR. SULLIVAN: Objection to form.  
 13 THE WITNESS: I -- I wouldn't, no.  
 14 MR. THOMAS: All right. And can the  
 15 court reporter show the witness what has  
 16 been marked as Exhibit 92.  
 17 BY MR. THOMAS:  
 18 Q: Is this the severance package that  
 19 you said would explain to Ms. Piehler when her  
 20 medical benefits would end?  
 21 A: I believe so, yes.  
 22 Q: And tell me what you told her when  
 23 they would end.  
 24 A: Well, I -- I would have went through  
 25 this -- I mean, I -- I don't remember the --

1 D. Berardo  
 2 Q: Well, go through it -- go through it  
 3 and tell me when it says they're going to end.  
 4 A: Sure. So it says (as read):  
 5 Benefits: Your group extended health  
 6 and dental benefits will cease at the end  
 7 of the month on the -- July 31st, 2015.  
 8 You have the election under COBRA  
 9 legislation to continue your group health,  
 10 vision care, and dental plan by paying the  
 11 premiums. You will receive a notification  
 12 from our COBRA administrative, COBRA help.'  
 13 Q: You may need to read just a little  
 14 slower for the court reporter there.  
 15 THE WITNESS: Sorry. Do you...  
 16 THE COURT REPORTER: That's okay. I  
 17 got it.  
 18 THE WITNESS: Okay.  
 19 To be eligible, you must respond to  
 20 the notice by August 30th, 2015.'  
 21 And then it goes on about life insurance.  
 22 BY MR. THOMAS:  
 23 Q: Isn't it -- isn't it true that cut  
 24 Mary Piehler's health insurance off before  
 25 July 31st?

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1 D. Berardo  
2 A: Not -- not that I recall, unless it  
3 was an administrative error.  
4 Q: Okay. Do you remember that she  
5 called you because her husband was going in  
6 for cancer treatment, and he didn't have  
7 health coverage because Absolute had cut his  
8 benefits off?  
9 A: I don't recall that conversation,  
10 but, you know, I'm not saying that it -- that  
11 that didn't happen. I just don't recall it.  
12 Q: You do recall many conversations with  
13 Mary Piehler after her termination about her  
14 health benefits; right?  
15 A: Her health benefits -- benefits  
16 specifically?  
17 Q: Yes.  
18 A: I mean, I just -- I just don't -- I  
19 don't recall the specifics of -- of health  
20 benefit questions or conversations.  
21 Q: Or benefits generally? Do you  
22 remember a number of calls with Mary Piehler  
23 about benefits generally?  
24 A: Sorry, what -- can you repeat the  
25 question.

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1 D. Berardo  
2 Q: Yes. I believe you testified earlier  
3 that you remember a number of calls with  
4 Ms. Piehler after her termination about her  
5 benefits.  
6 MR. SULLIVAN: Objection to form.  
7 BY MR. THOMAS:  
8 Q: Correct?  
9 A: I don't -- I don't know if I said  
10 that. There was a number of calls with Mary  
11 Piehler after when we were trying to negotiate  
12 a settlement.  
13 Q: And you don't remember the fact that  
14 you had cut off her husband's health insurance  
15 who had cancer?  
16 A: I don't recall. If -- if that did  
17 happen, it -- it would have been an  
18 administrative error and been rectified  
19 immediately.  
20 Q: You seem to -- do you have -- do you  
21 have difficulty recalling conversations with  
22 people?  
23 MR. SULLIVAN: Objection to form.  
24 THE WITNESS: Yes, five years ago in  
25 the past, I would. Five years in the past,

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1 D. Berardo  
2 I would, yes.  
3 BY MR. THOMAS:  
4 Q: Even something like being responsible  
5 for cutting off somebody's medical coverage  
6 for their husband who has cancer?  
7 MR. SULLIVAN: Objection to form.  
8 BY MR. THOMAS:  
9 Q: That would sort of slip by?  
10 MR. SULLIVAN: Objection to form.  
11 THE WITNESS: I -- I -- I don't know  
12 what you're asking me. If you can repeat  
13 the question.  
14 BY MR. THOMAS:  
15 Q: Yeah. Are you -- are you the type of  
16 person who would forget the fact that your HR  
17 department cut off health benefits for an  
18 employee who you fired and whose husband was  
19 relying on them for his cancer treatments?  
20 MR. SULLIVAN: Objection to form.  
21 THE WITNESS: Are you asking me five  
22 -- four years later if I would remember  
23 that?  
24 BY MR. THOMAS:  
25 Q: Yeah.

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1 D. Berardo  
2 A: It's possible that I wouldn't, four  
3 years after the fact.  
4 Q: Let's go to Exhibit 93. When you've  
5 had a chance to read it, let me know.  
6 A: Sure. Ready.  
7 Q: Okay. Why did you say that you  
8 normally don't do exit interviews for this  
9 type of circumstance?  
10 A: We don't do exit -- we -- we never do  
11 exit interviews for terminations that are  
12 initiated by the employer.  
13 Q: Why don't you -- why -- why wouldn't  
14 you do those?  
15 A: Most companies don't, from -- from my  
16 understanding, best practice, is because the  
17 purpose of the exit interviews is to gather  
18 information to, you know, help improve the --  
19 you know, it could be the culture or -- or  
20 whatever it might be of the company.  
21 Generally, terminated employees don't provide  
22 constructive -- constructive information,  
23 and -- and, generally, we -- we really want to  
24 understand the reasons why people are leaving.  
25 That's the main purpose of the exit interview.

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1 D. Berardo  
2 And in this circumstance -- that just  
3 wasn't the circumstance in this.  
4 Q: If someone was fired for  
5 discriminatory reasons, wouldn't you want to  
6 get their input on that --  
7 MR. SULLIVAN: Objection --  
8 BY MR. THOMAS:  
9 Q: -- in their exit interview?  
10 MR. SULLIVAN: Objection to form.  
11 THE WITNESS: In this circumstance,  
12 she wasn't terminated for discriminatory  
13 reasons.  
14 BY MR. THOMAS:  
15 Q: I'm not -- I'm just asking you, as an  
16 HR manager at Absolute, wouldn't you want to  
17 know that from an employee, if they thought  
18 they were fired for discriminatory reasons?  
19 A: So if I --  
20 MR. SULLIVAN: Objection -- objection  
21 to form.  
22 THE WITNESS: If, hypothetically,  
23 someone was terminated because of  
24 discriminatory reasons, would we want to  
25 know about that?

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1 D. Berardo  
2 BY MR. THOMAS:  
3 Q: Yes.  
4 A: Yes -- yes, we would.  
5 Q: And if they felt they were  
6 discriminated for discriminatory reasons,  
7 wouldn't you want to know that too?  
8 MR. SULLIVAN: Objection to form.  
9 THE WITNESS: Yes, we would want to  
10 know that. At least, I would want to know  
11 that.  
12 BY MR. THOMAS:  
13 Q: Did you ever ask that of Ms. Piehler?  
14 MR. SULLIVAN: Objection to form.  
15 THE WITNESS: No, it's not a -- not a  
16 question that -- that we generally ask.  
17 BY MR. THOMAS:  
18 Q: All right. I have -- let me just  
19 take a quick look here. All right. I have  
20 nothing further at this time.  
21 MR. SULLIVAN: Take a break?  
22 MS. LESTRADE: Yeah.  
23 MR. SULLIVAN: All right. We're  
24 going to take a --  
25 MS. LESTRADE: Probably just --

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1 D. Berardo  
2 MR. SULLIVAN: -- ten-minute break or  
3 so.  
4 MS. LESTRADE: More than that.  
5 MR. SULLIVAN: Okay.  
6 MR. THOMAS: Okay.  
7 VIDEOGRAPHER: Going off the record.  
8 MS. LESTRADE: Yeah.  
9 VIDEOGRAPHER: The time is 6:55.  
10 (PROCEEDINGS RECESSED AT 6:55 P.M.)  
11 (PROCEEDINGS RECONVENED AT 7:14 P.M.)  
12 VIDEOGRAPHER: Back on the record.  
13 The time is 7:14.  
14 EXAMINATION BY  
15 MS. LESTRADE:  
16 Q: Good evening, Mr. Berardo. As you  
17 know, my name is Laura Lestrade. I represent  
18 the defendants in this action, and I'm going  
19 to be asking you some questions. The same  
20 rules apply; if you need to take a break, just  
21 let me know, and we'll try to accommodate  
22 that. Just I --  
23 MR. THOMAS: Laura, can you speak up  
24 just a little bit. Because I'm having a  
25 little trouble hearing you.

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1 D. Berardo  
2 BY MS. LESTRADE: Sure.  
3 Q: I just ask that you -- you -- we  
4 don't take a break while there is a question  
5 pending.  
6 I would like you to turn to  
7 Exhibit 67. You reviewed this document in  
8 detail earlier today. You could --  
9 A: Yes.  
10 Q: -- review it a little further, if you  
11 want to just refresh yourself.  
12 A: I recall the document.  
13 Q: Okay. Does this survey provide you  
14 with any reason to believe that Todd Awtry or  
15 Thomas Kenny discriminated against Mary  
16 Piehler?  
17 A: Absolutely --  
18 MR. THOMAS: Objection.  
19 THE WITNESS: Absolutely not.  
20 BY MS. LESTRADE:  
21 Q: Does anything in this survey provide  
22 you with any reason to believe that Thomas  
23 Kenny or Todd Awtry discriminated against  
24 older employees?  
25 A: Absolutely not.

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1 D. Berardo  
 2 MR. THOMAS: Objection.  
 3 BY MS. LESTRADE:  
 4 Q: Did this survey provide you with any  
 5 reason to believe that Todd Awtry or Thomas  
 6 Kenny discriminated against older employees?  
 7 MR. THOMAS: Objection.  
 8 THE WITNESS: Absolutely not.  
 9 BY MS. LESTRADE:  
 10 Q: Did this survey provide you any  
 11 reason to believe that Todd Awtry or Thomas  
 12 Kenny treated women differently in terms of  
 13 communicating company strategies or  
 14 initiatives?  
 15 A: Absolutely not.  
 16 MR. THOMAS: Objection.  
 17 THE WITNESS: Absolutely not.  
 18 BY MS. LESTRADE:  
 19 Q: Did this survey provide you with any  
 20 reason to believe that Todd Awtry or Thomas  
 21 Kenny treated older people differently in  
 22 terms of communicating company strategies or  
 23 initiatives?  
 24 MR. THOMAS: Objection.  
 25 THE WITNESS: Absolutely not.

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1 D. Berardo  
 2 BY MS. LESTRADE:  
 3 Q: We discussed earlier that Ms. Piehler  
 4 raised some concerns with you concerning --  
 5 about her treatment at Absolute. Did any of  
 6 the concerns raised by Ms. Piehler involve  
 7 sexual harassment?  
 8 A: Never.  
 9 MR. THOMAS: Objection.  
 10 BY MS. LESTRADE:  
 11 Q: Did any of the concerns raised by  
 12 Ms. Piehler involve discrimination of any  
 13 kind?  
 14 A: Never.  
 15 BY MS. LESTRADE:  
 16 Q: Did any --  
 17 MR. THOMAS: Objection.  
 18 BY MS. LESTRADE:  
 19 Q: -- of the concerns raised by  
 20 Ms. Piehler involve crimes, criminal activity?  
 21 A: Never.  
 22 Q: Or fraud or --  
 23 MR. THOMAS: Objection.  
 24 BY MS. LESTRADE:  
 25 Q: -- embezzlement?

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1 D. Berardo  
 2 A: No.  
 3 Q: Did any of Ms. Piehler's complaints  
 4 give rise to a duty to investigate those  
 5 complaints?  
 6 A: No.  
 7 MR. THOMAS: Objection.  
 8 BY MS. LESTRADE:  
 9 Q: Can I have you look at Exhibit 21  
 10 again. If you could turn to it in the book.  
 11 A: Sure. Okay.  
 12 Q: I'm going to direct your attention to  
 13 the first paragraph. And the one, two, three,  
 14 four -- fifth line down towards the end where  
 15 it -- it says:  
 16 We did not launch a corporate  
 17 investigation in my CER, who I identified  
 18 as having a part-time job during the day  
 19 when Absolute is paying him to be here  
 20 hunting business in the northeast. We  
 21 continue to pay him at full value.'  
 22 Are you familiar with that -- do you -- do you  
 23 know what Ms. Piehler was referring to there?  
 24 A: I remember a situation --  
 25 MR. THOMAS: Objection.

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1 D. Berardo  
 2 THE WITNESS: I remember a situation  
 3 where an employee was away at lunchtime for  
 4 a period of time, and it was determined  
 5 that he was -- he was teaching a fitness  
 6 class or something -- something --  
 7 something to that effect.  
 8 BY MS. LESTRADE:  
 9 Q: Was an inquiry done into this  
 10 situation?  
 11 A: I don't --  
 12 MR. THOMAS: Objection.  
 13 THE WITNESS: I don't recall the  
 14 specifics of how -- how much we  
 15 investigated. We definitely did  
 16 investigate, and it was determined that he  
 17 was essentially just leaving on his lunch  
 18 hour.  
 19 BY MS. LESTRADE:  
 20 Q: M'mm-hmm.  
 21 A: So nothing further was done. Because  
 22 it was -- it -- it wasn't deemed as  
 23 inappropriate.  
 24 Q: And there was some testimony earlier  
 25 about an allegation that Todd Awtry shared

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1 D. Berardo  
2 performance reviews of his reports with  
3 everyone on his team. Was it -- did he -- did  
4 he share the reviews themselves?  
5 A: No. From my recollection --  
6 MR. THOMAS: Objection.  
7 THE WITNESS: From my recollection,  
8 it was the -- it was the ratings on those  
9 reviews in -- in a spread -- spreadsheet  
10 that he had pasted in an email.  
11 BY MS. LESTRADE:  
12 Q: M'mm-hmm. Okay. I'm going to have  
13 you look at Exhibits 62, 63, 64, and 66.  
14 A: Starting with 62, sorry?  
15 Q: 62, 63, 64, and 66.  
16 A: Okay.  
17 Q: Just briefly, just if you could focus  
18 on the review periods for each review.  
19 A: Sure. Through -- sorry, through 64?  
20 Q: 62, 63, 64, and 66.  
21 A: And 66. Okay.  
22 Q: Did Todd Awtry prepare performance  
23 reviews for Mary Piehler for each evaluation  
24 period that he supervised her?  
25 A: So that --

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1 D. Berardo  
2 MR. THOMAS: Objection.  
3 THE WITNESS: Let me quickly review  
4 again.  
5 BY MS. LESTRADE:  
6 Q: M'mm-hmm.  
7 A: Yes, with the exception of the last  
8 six months, because the review period -- the  
9 review period hadn't started by the time Mary  
10 exited.  
11 Q: Okay. And if you look at  
12 Exhibit 62 --  
13 A: Okay.  
14 Q: -- if you look at the reviewer  
15 comments, most of the reviewer comments say:  
16 I only had six months visibility to  
17 observe the competency.'  
18 Is that correct?  
19 A: That's correct.  
20 Q: Are you aware whether Mr. Awtry gave  
21 that same review comment for his other reports  
22 during that time -- that time frame?  
23 A: Yeah, from -- from my recollection --  
24 MR. THOMAS: Objection.  
25 THE WITNESS: From my recollection,

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1 D. Berardo  
2 this is -- he -- he copy and pasted the  
3 same 'I only had six months visibility to  
4 observe this competency' for all his direct  
5 reports during that review period.  
6 BY MS. LESTRADE:  
7 Q: And his direct reports during that  
8 review period, do you remember who they were?  
9 A: They would --  
10 MR. THOMAS: Objection.  
11 THE WITNESS: They would have been  
12 the regional directors. Specifically -- I  
13 don't remember specifically.  
14 BY MS. LESTRADE:  
15 Q: So it was all regional directors that  
16 reported to him at -- at that time?  
17 MR. THOMAS: Objection.  
18 THE WITNESS: In --  
19 MR. THOMAS: Objection.  
20 THE WITNESS: In North America, yeah.  
21 BY MS. LESTRADE:  
22 Q: M'mm-hmm. Regional directors and/or  
23 area vice presidents?  
24 A: Yes. Yeah. They were kind of one  
25 and the same. Some people were AVP; some

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1 D. Berardo  
2 people were regional directors. Yes.  
3 Q: When Mary Piehler complained about  
4 not having received a performance review, did  
5 it require an investigation by you?  
6 A: Not a formal --  
7 MR. THOMAS: Objection.  
8 THE WITNESS: Not a -- it wouldn't --  
9 it wouldn't set off a formal investigation,  
10 no.  
11 BY MS. LESTRADE:  
12 Q: Do you think Mary Piehler was treated  
13 unfairly by Absolute?  
14 A: I do --  
15 MR. THOMAS: Objection.  
16 THE WITNESS: I do not.  
17 BY MS. LESTRADE:  
18 Q: And in your -- as an -- as an HR  
19 director at Absolute during that time frame,  
20 do you believe -- would it be appropriate for  
21 an employee to be terminated for repeatedly  
22 disagreeing with her manager on business  
23 issues?  
24 MR. THOMAS: Objection.  
25 THE WITNESS: I -- I would say

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1 D. Berardo  
2 that -- that would be a conversation I  
3 would have with the manager, and -- and it  
4 -- it would be a valid reason to terminate  
5 someone, yes.  
6 BY MS. LESTRADE:  
7 Q: Can you turn to Exhibit 17, please.  
8 And on the third page, which is DEFS02585, in  
9 this email from you to Ms. Piehler,  
10 Ms. Piehler states -- at three lines up from  
11 this first full paragraph, she --  
12 A: Yeah.  
13 Q: -- says:  
14 I am not attempting to overreact. I  
15 am covering myself in case this witch-hunt  
16 continues in FY15.  
17 Do you know what she -- did you understand  
18 what she meant by 'this witch-hunt'?  
19 MR. THOMAS: Objection.  
20 THE WITNESS: I would only be  
21 speculating what I -- what I thought back  
22 then.  
23 BY MS. LESTRADE:  
24 Q: M'mm-hmm.  
25 MR. THOMAS: Objection.

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1 D. Berardo  
2 BY MS. LESTRADE:  
3 Q: Well, let me -- did you consider the  
4 investigation into the DOE commission payments  
5 to be a witch-hunt?  
6 A: Absolutely not, no.  
7 MR. THOMAS: Objection.  
8 BY MS. LESTRADE:  
9 Q: Are you aware of any actions by Todd  
10 Awtry that cause you to think that he  
11 discriminated against Mary Piehler on the  
12 basis of age or sex?  
13 A: Absolutely --  
14 MR. THOMAS: Objection.  
15 THE WITNESS: Absolutely not.  
16 BY MS. LESTRADE:  
17 Q: Are you aware of any actions by  
18 Thomas Kenny that cause you to think that he  
19 discriminated against Mary Piehler on the  
20 basis of age or sex?  
21 MR. THOMAS: Objection.  
22 THE WITNESS: Absolutely not.  
23 BY MS. LESTRADE:  
24 Q: Are you aware of any actions by Geoff  
25 Haydon that cause you to think that he

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1 D. Berardo  
2 discriminated against Mary Piehler on the  
3 basis of age or sex?  
4 MR. THOMAS: Objection.  
5 THE WITNESS: Absolutely not.  
6 BY MS. LESTRADE:  
7 Q: Are you aware of any actions by  
8 anyone at Absolute that cause you to think  
9 that Absolute discriminated against Mary  
10 Piehler on the basis of age or sex?  
11 A: Not that I --  
12 MR. THOMAS: Objection.  
13 THE WITNESS: Yeah, not that I  
14 recall, no.  
15 BY MS. LESTRADE:  
16 Q: As the head of HR, were you  
17 responsible for the recruiting function?  
18 A: Yeah, the recruiting function --  
19 MR. THOMAS: I didn't hear -- sorry,  
20 what was that? I didn't hear for the...  
21 BY MS. LESTRADE:  
22 Q: I said as -- as the head of HR, were  
23 you responsible for the recruiting function?  
24 MR. THOMAS: Objection.  
25 THE WITNESS: Yes, the recruiting

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1 D. Berardo  
2 function rolled up to me. Reported in to  
3 me. Yes.  
4 BY MS. LESTRADE:  
5 Q: Were you ever given any instruction  
6 by anyone at Absolute that Absolute wanted to  
7 focus on hiring younger or male employees?  
8 A: Never.  
9 Q: Did you ever give any such  
10 instruction to --  
11 MR. THOMAS: Objection.  
12 BY MS. LESTRADE:  
13 Q: -- your -- to the recruiters who  
14 reported to you?  
15 A: Absolutely not.  
16 Q: Did --  
17 MR. THOMAS: Objection.  
18 BY MS. LESTRADE:  
19 Q: Did you ever give any such  
20 instruction to internal recruiters that  
21 Absolute used in finding candidates for  
22 employment?  
23 A: Absolutely not.  
24 MR. THOMAS: Objection.  
25 BY MS. LESTRADE:



Page 341

1 D. Berardo  
2 Q: Was is it Absolute's policy to hire  
3 younger and male employees?  
4 A: It was not.  
5 MR. THOMAS: Objection.  
6 BY MS. LESTRADE:  
7 Q: Yeah. Did you ever hear Geoff Haydon  
8 say that he wanted to get rid of older  
9 employees?  
10 A: Never.  
11 Q: Did you --  
12 MR. THOMAS: Objection.  
13 BY MS. LESTRADE:  
14 Q: Did you ever hear Geoff Haydon say  
15 that he wanted to get rid of female employees?  
16 A: Never.  
17 Q: Did you --  
18 MR. THOMAS: Objection.  
19 BY MS. LESTRADE:  
20 Q: -- ever hear Geoff Haydon say he  
21 wanted to hire male employees?  
22 A: Never.  
23 MR. THOMAS: Objection.  
24 BY MS. LESTRADE:  
25 Q: Did you ever hear Geoff say -- Haydon

Page 342

1 D. Berardo  
2 say he wanted to hire young employees?  
3 A: No. Never.  
4 MR. THOMAS: Objection.  
5 BY MS. LESTRADE:  
6 Q: Did Geoff Haydon express any hiring  
7 criteria for people he wanted to join  
8 Absolute?  
9 MR. THOMAS: Objection.  
10 THE WITNESS: Not to the -- not to  
11 the best of my recollection. The decisions  
12 were generally left in the hands of the  
13 hiring managers.  
14 BY MS. LESTRADE:  
15 Q: M'mm-hmm. Did Geoff Haydon have a  
16 vision for changing the business direction of  
17 the company?  
18 A: Yes.  
19 MR. THOMAS: Objection.  
20 THE WITNESS: Yes. That's -- I think  
21 that's why he came into the company.  
22 BY MS. LESTRADE:  
23 Q: M'mm-hmm.  
24 A: Yeah.  
25 Q: And what -- what kinds of business

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1 D. Berardo  
2 was he looking to -- what kind of business was  
3 he looking to turn Absolute into?  
4 MR. THOMAS: Objection.  
5 THE WITNESS: So I -- I can just  
6 answer from an HR perspective --  
7 BY MS. LESTRADE:  
8 Q: M'mm-hmm.  
9 A: -- but -- but my observation is that,  
10 you know, he wanted to turn Absolute into a  
11 world-class organization and wanted -- wanted  
12 to expand our reach, our revenue, improve our  
13 products, and -- and -- you know, essentially,  
14 that's what I recall.  
15 Q: Okay. I would like you to take a  
16 look at -- again, at Exhibit 21. Actually,  
17 first, look at Exhibit 17.  
18 A: Okay.  
19 Q: In -- on the third page, 2585,  
20 Ms. Piehler is complaining to you about Todd  
21 Awtry; is that correct?  
22 A: Let me --  
23 MR. THOMAS: Objection.  
24 THE WITNESS: Let me just quickly --  
25 quickly read it again. Yeah, the subject

Page 344

1 D. Berardo  
2 was Todd Awtry.  
3 BY MS. LESTRADE:  
4 Q: Okay. And in the very first line of  
5 the last -- the -- the -- actually, it's the  
6 second-to-last paragraph. She says:  
7 I have seen published numbers that  
8 are wrong.'  
9 Do you see that?  
10 A: Yes, I do.  
11 Q: Okay. And -- and then on page 2584  
12 at the bottom, you say:  
13 Hi, Mary. Can you give me more  
14 colour into your second-to-last paragraph.'  
15 Do you see that?  
16 A: I do, yes.  
17 Q: Okay. And the second-to-last  
18 paragraph is on the preceding page where she  
19 talks about published numbers that are wrong?  
20 A: Right. Yeah.  
21 Q: Okay. So if you go back to  
22 Exhibit 21 --  
23 A: Okay.  
24 Q: -- the first line, she says:  
25 Daniel, in response to your request,

1 D. Berardo  
 2 here is a little colour in the comments I  
 3 made to you.'  
 4 And much of this email is Ms. Piehler  
 5 forwarding to you email correspondence that  
 6 she had with Dan Miller about the reporting of  
 7 sales numbers. Is that correct?  
 8 A: Yes.  
 9 Q: Okay. Who was Dan Miller?  
 10 MR. THOMAS: Objection.  
 11 THE WITNESS: Dan Miller was a -- he  
 12 worked in the sales ops team. I'm not sure  
 13 what his position was, but he worked in the  
 14 sales operations team.  
 15 BY MS. LESTRADE:  
 16 Q: And was he responsible for reporting  
 17 the numbers?  
 18 MR. THOMAS: Objection.  
 19 THE WITNESS: I don't -- I don't  
 20 recall if he was responsible for reporting  
 21 the numbers, but he was responsible for --  
 22 for -- for gathering the numbers. And --  
 23 and, perhaps, yeah, reporting them to --  
 24 you know, to, like, the finance team.  
 25 BY MS. LESTRADE:

1 D. Berardo  
 2 Q: M'mm-hmm. Okay. Was Todd Awtry  
 3 responsible for gathering the numbers for the  
 4 finance team?  
 5 A: He was not, no.  
 6 MR. THOMAS: Objection.  
 7 THE WITNESS: Not to the -- not to  
 8 the best of my recollection.  
 9 BY MS. LESTRADE:  
 10 Q: Okay. Mr. Berardo, I would -- I  
 11 would like you to look again at Exhibit 81.  
 12 A: Okay.  
 13 Q: On the second page.  
 14 A: Okay.  
 15 Q: There was some suggestion earlier  
 16 that -- that a Tom Loele may have been hiding  
 17 in the conference room where the termination  
 18 took place. Can you look at three lines from  
 19 the bottom of that email.  
 20 A: Three lines from the bottom?  
 21 Q: I mean, not of the email.  
 22 A: Oh.  
 23 Q: Of the -- on the page that's  
 24 DEFS07446.  
 25 A: Right. So it says:

1 D. Berardo  
 2 Tom came into the...'  
 3 Where it says:  
 4 Tom came into the room after Mary  
 5 left the parking lot, and we debriefed what  
 6 had taken place with Todd and Daniel!'  
 7 Q: Yeah. Okay. Does that -- does that  
 8 refresh your recollection -- recollection at  
 9 all that Mr. Loele was, in fact, not in the  
 10 room during the termination meeting and was  
 11 not, in fact, hiding in the room?  
 12 MR. THOMAS: Objection.  
 13 THE WITNESS: I don't -- I don't -- I  
 14 don't recall the -- I don't recall vivid  
 15 memories of the -- of the call. But, I  
 16 mean, I -- when the -- this termination  
 17 note was sent to me, I mean, I reviewed it,  
 18 and -- and -- and I said that it was  
 19 accurate. So -- so, you know, three  
 20 years -- three and a half years ago me  
 21 would have said that this is -- this is  
 22 what happened.  
 23 BY MS. LESTRADE:  
 24 Q: Okay. I have no more questions.  
 25 EXAMINATION BY

1 D. Berardo  
 2 MR. THOMAS:  
 3 Q: Mr. Berardo, where -- why wasn't  
 4 Mr. Loele in the room, like the notes say?  
 5 A: Why wasn't?  
 6 Q: Why wasn't he?  
 7 A: Why wasn't he in the room? Well, we  
 8 just -- from my recollection, we just asked  
 9 one person from the -- from the company to be  
 10 in the room. So I don't know why he wasn't in  
 11 the room.  
 12 Q: Why did you ask only one person?  
 13 A: That's -- that was all that was  
 14 really necessary.  
 15 Q: Why was -- why was he necessary to be  
 16 there at all, then?  
 17 A: I -- I don't know. You -- you would  
 18 have to ask Catherine. I -- I don't know  
 19 why -- why Catherine brought him to -- to the  
 20 meeting.  
 21 Q: And you don't know why Catherine kept  
 22 him out -- kept him outside of Mary's sight  
 23 until after the meeting was over and then  
 24 brought him in; right?  
 25 A: I don't -- I don't recall why, no.

1 D. Berardo  
2 Q: And you don't know where he was  
3 situated so that Mary couldn't see him during  
4 the meeting; correct? Or before the meeting?  
5 A: Well, it says here:  
6 Tom came into the room after Mary  
7 left.  
8 So according to these notes, Tom wasn't in the  
9 room. I don't know where he was situated  
10 before --  
11 Q: Do you know where he was?  
12 A: I don't, no.  
13 Q: And do you know why he was somewhere  
14 where Mary couldn't see him, apparently?  
15 A: He was outside the room, because he  
16 wasn't part of the termination meeting.  
17 Q: That wasn't my question.  
18 A: Sorry, can you repeat your question.  
19 MR. THOMAS: Yes. Could the court  
20 reporter read it back.  
21 (REPORTER READ BACK)  
22 THE WITNESS: I -- I don't know -- I  
23 don't know why he was outside the room.  
24 BY MR. THOMAS:  
25 Q: Nothing further.

1 D. Berardo  
2 VIDEOGRAPHER: Okay. This concludes  
3 today's deposition. Going off record at  
4 7:40.  
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6  
7 (PROCEEDINGS ADJOURNED AT 7:40 P.M.)  
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1  
2 REPORTER CERTIFICATION  
3 I, Jessica D. Archibald, Official  
4 Reporter in the Province of British Columbia,  
5 Canada, BCSRA No. 607, do hereby certify:  
6  
7 That the proceedings were taken down  
8 by me in shorthand at the time and place  
9 herein set forth and thereafter transcribed,  
10 and the same is a true and correct and  
11 complete transcript of said proceedings to the  
12 best of my skill and ability.  
13  
14 IN WITNESS WHEREOF, I have hereunto  
15 subscribed my name this 22nd day of May 2019.  
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Jessica D Archibald  
Official Reporter, CSR(A)

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2

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	16 DEFS08830; Exhibit Berardo L	225
17 Exhibit 87	18 Berardo Exhibit O	311
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